

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





COURT

8  
P/S

# 74-1553

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## United States Court of Appeals For the Second Circuit.

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Index No. 67 Civ. 1137 (RJW).

ILIGAN INTEGRATED STEEL MILLS, INC., CONTINENTAL INSURANCE COMPANY, STANDARD MARINE INSURANCE COMPANY LTD., ROYAL INSURANCE COMPANY, LTD., FIREMAN'S FUND INSURANCE COMPANY, COMMERCIAL UNION INSURANCE COMPANY OF NEW YORK, EMPLOYERS COMMERCIAL UNION INSURANCE COMPANY and AETNA INSURANCE COMPANY,

*Plaintiffs-Appellants,*

*against*

SS JOHN WEYERHAEUSER, her engines, boilers, etc., WEYERHAEUSER COMPANY, and NEW YORK NAVIGATION COMPANY, INC.,

*Defendants-Appellees-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

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### JOINT APPENDIX.

Volume I—Pages 1a to 470a.

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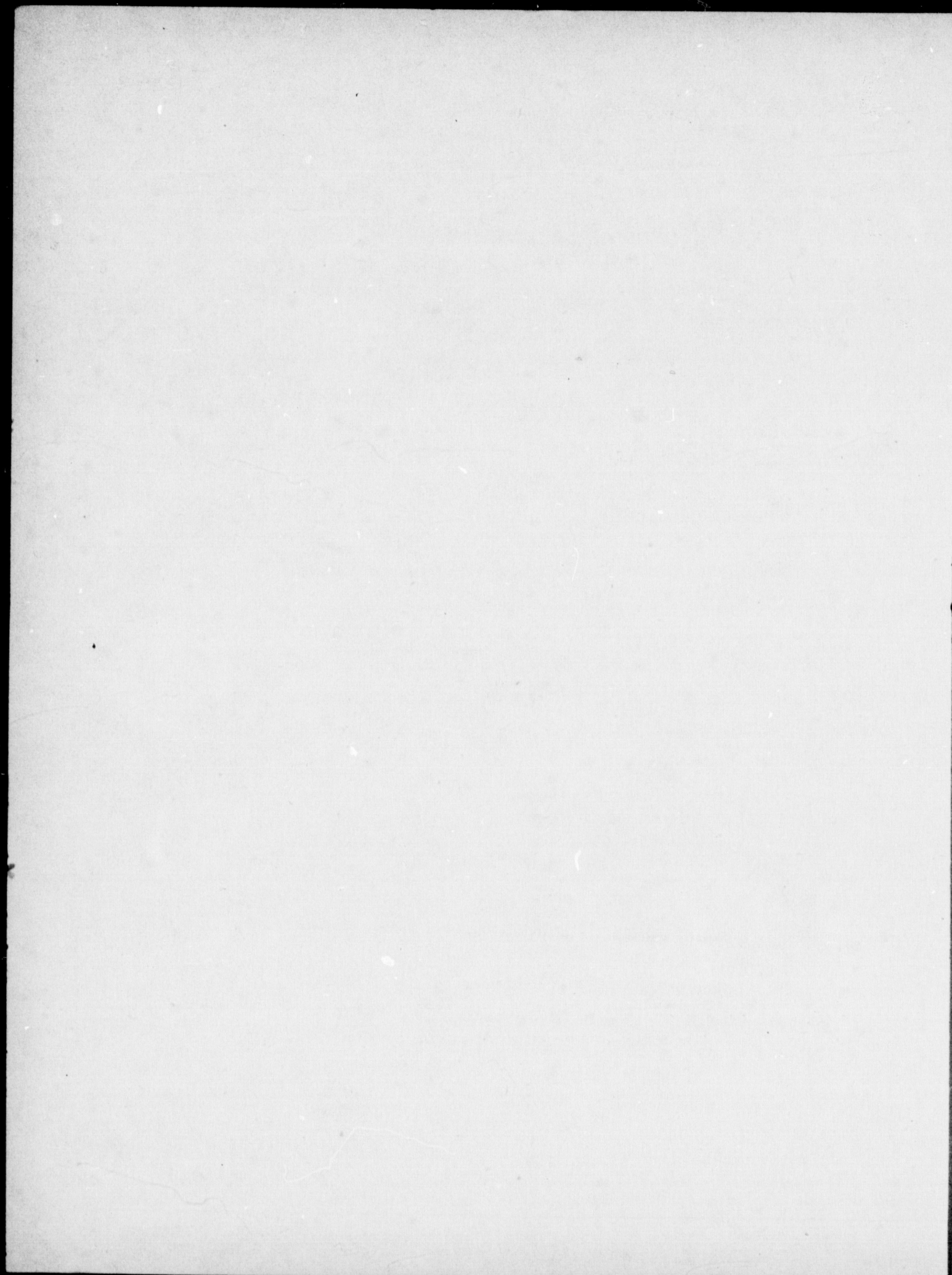
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**Docket Entries**

**UNITED STATES DISTRICT COURT**

**67 Civ. 1187**

**In Admiralty**

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**ILIGAN INTERNATIONAL CORP. and ILIGAN INTEGRATED  
STEEL MILLS INC.,**

*Plaintiffs,*

**—against—**

**S.S. JOHN WEYERHAEUSER, her engines, boilers, etc.,  
WEYERHAEUSER COMPANY and NEW YORK NAVIGATION  
COMPANY INC.,**

*Defendants.*

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**DATE**

**PROCEEDINGS**

- 3-23-67** Filed complaint and issued summons.
- 3-31-67** Filed summons & return, served following  
defts.: N.Y. Navigation Co. Inc. by John Shoe-  
han 3-23-67. Weyerhaeuser Co. by Mrs. Erma  
Kneff 3-23-67.
- 5-18-67** Filed deft's (Weyerhaeuser Co.) notice of ap-  
pearance.
- 6-20-67** Filed deft's (Weyerhaeuser Co.) Answer.
- 6-20-67** Filed deft's (Weyerhaeuser Co.) interroga-  
tories.
- 8-25-67** Filed plttfs' affdvt. & notice of motion to sustain  
exceptions to interrogs. ret. 9-12-67.
- 8-25-67** Filed plttfs' memorandum in support of motion.
- 9-11-67** Filed deft (Weyerhaeuser Co.) affdvt. in op-  
position to plttfs' motion to strike interrogs.
- 9-11-67** Filed memorandum of law of deft. (Weyer-  
haeuser Co.) in opposition to plttf's motion.



*Docket Entries*

DATE	PROCEEDINGS
9-11-67	Filed stip on motion ret. 10-13-67 be adjourned to 11-16-67.
11- 3-67	Filed plaintiffs notice of motion & affidavit for discovery & insp. ret. 11-16-67.
11- 3-67	Filed plaintiffs memorandum.
11-15-67	Filed deft. (Weyerhaeuser Company) affidavit in opposition.
11-15-67	Filed deft. (Weyerhaeuser Company) memorandum of law in opposition.
11-16-67	Filed memo endorsed on motion filed 11-3-67—Objections sustained as to inspection items Nos. 17 and 18, all other objections overruled. Inspection to be provided within 90 days at convenient place to be agreed upon by counsel; if outside of this district actual reasonable expense of one attorney should be taxable by successful party—So ordered—Ryan, J.
2- 6-68	Filed plaintiff's answers to interroga.
2- 8-68	Filed stip. & order withdrawing plaintiff's motion objecting to interroga. by deft. Weyerhaeuser Company—Ryan, J.
5- 2-69	Filed notice of change of firm name and address of atty. for plttfs.
5- 3-69	On call for review—G. R. 2B before Sugarman, J.
6- 3-69	Filed plttf's notice to take deposition of Weyerhaeuser Co. by H. I. Dumble.
6- 3-69	Filed plttf's notice to take deposition of New York Navigation Co. by August H. Grevers.

*Docket Entries*

DATE	PROCEEDINGS
6- 4-69	Filed order that plttf. shall file note of issue within 180 days or action to be dismissed. Sugarman, Ch.J. m/n.
9- 4-69	Filed notice of change of address of atty. for deft. Weyerhaeuser Co.
11-28-69	Filed Answer (deft's) and crossclaim (N. Y. Navigation Co. Inc.).
12- 5-69	Filed plttfs request for an extension of time to file note of issue & statement of readiness up to & including 12-30-69—So ordered—Sugarman, Ch.J.
12-29-69	Filed plttfs Note of Issue & statement of readiness.
1-26-70	Filed order pursuant to Cal. Rules 6 & 13, Sugarman, Ch.J.
1-30-70	Filed plttf's designation of trial counsel.
2- 3-70	Filed defts' designation of trial counsel.
2- 2-70	Filed deft's designation of trial counsel for Weyerhaeuser Co.
2-11-70	Filed deft's designation of trial counsel.
2-26-70	Filed deft Weyerhaeuser Co. Answer to cross claim of deft NY Navigation Co.
7-30-70	Filed deft's notice to take deposition of Harold Dumble ret on 8-4-70.
6- 4-71	Filed plttfs' affidvt & notice of motion to amend complaint.
6- 4-71	Filed memo endorsed on motion filed this date—Motion denied—So ordered—McLean, J. m/n.



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2 is it?

3 A No, sir.

4 Q It has to be signed by the carrier, doesn't  
5 it?

6 A Yes, sir.

7 Q And isn't it customary for the carrier to put  
8 certain stamps on the bill of lading before he issues  
9 it?

10 A Should they be required by the contract or by  
11 the nature of the cargo, yes.

12 Q Where did these original bills of lading  
13 have to go, if you know, before they went to Iligan in  
14 the Philippines?

15 A To the Philippine Consulate in Washington.

16 Q Do you know how the freight was adjusted for  
17 this shipment?

18 A We found in the copy of the bill of lading  
19 which was forwarded to us along with the invoice which  
20 I attested to here a minute ago, we found an error in  
21 weight in our audit of the billing, and we rejected  
22 it on that basis, that there was a second bill of lading  
23 issued, a corrected bill of lading to correct the weight  
24 as shown.

25 Q But the ultimate freight amount of \$320,000-

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Best-redirect

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and something --

A Was correct.

Q -- that was correct. But how was that arrived at, do you know? Are you aware of the answer to that?

A That was arrived at by applying the weight measured concept to the freight which was moved and applying the rate scale as outlined in the contract.

Q As outlined in the July 11th contract, Plaintiff's Exhibit 4?

A Yes, sir.

MR. MALOOF: No further questions.

MR. WARNER: No questions.

MR. DE ORCHIS: I would like to have marked for identification the book from which the witness was reading on direct examination as he answered Mr. Maloof's questions. He called it his wallet, I believe.

MR. MALOOF: Wallet?

MR. DE ORCHIS: I am sorry. I misunderstood. Was it something else he called it?

THE WITNESS: Log.

MR. DE ORCHIS: I am sorry. His log. I would like that marked for identification.

(Defendant New York Navigation Exhibit A marked



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for identification.)

THE COURT: Before you go, Mr. Best, just when things seem clear a cloud descends.

Do I understand from this last series of answers that there was a second set of bills of lading issued?

THE WITNESS: There was, to correct the weight on the bill of lading. We requested a second corrected bill of lading.

THE COURT: We have in evidence this morning a bill of lading which was marked Exhibit 8. Is that the first or second set?

MR. NALOOP: The first, your Honor.

THE WITNESS: On January 5th. This is the correct set, your Honor. My letter to the Philippines states that "This revised bill of lading reflects a change of the gross weight to 4,505,985 pounds," which is what it is on this bill of lading which you have before you. From the original of 4,506,341 pounds. This is the corrected bill of lading.

THE COURT: What happened to the ones that were wrong?

THE WITNESS: The originals of the first set of ladings and the originals of the second set of ladings

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Best

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2 went to the Philippines. Lavship of Baltimore, Inc.  
3 issued corrected copies of the bill of lading to New  
4 York Navigation with two copies to me. I forwarded  
5 one copy which was freighted to our customer in the  
6 Philippines and retained one in my file. This is my  
7 file copy.

8 THE COURT: When you say freighted what  
9 do you mean?

10 THE WITNESS: I mean showing the number of  
11 cubic feet and pounds payable in the payable column.

12 THE COURT: What is the Lavship of Baltimore,  
13 out of curiosity?

14 THE WITNESS: They are agents, I believe, of  
15 New York Navigation in Baltimore. They are stevedores  
16 and vessel agents.

17 THE COURT: Actually, bill of lading Exhibit  
18 8 is signed by somebody whose name I can't make out but  
19 it looks like Freeze, and under it it says "Lavship of  
20 Baltimore, Inc., as agent," and he is the only fellow  
21 that signed it, isn't he?

22 THE WITNESS: Yes, sir.

23 THE COURT: The master never si-ned it, did  
24 he, as far as you know?

25 THE WITNESS: As far as I know.



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Best

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1  
2 THE COURT: And New York Navigation didn't  
3 sign it with any corporate officer, as far as I can  
4 see. It is simply signed by a Mr. Freeze of Lavship,  
5 is that right?

6 THE WITNESS: It is signed for the master by  
7 New York Navigation, Inc., as agent for the master, by  
8 Thomas Freeze, Lavship of Baltimore, as agents.

9 MR. MALOOF: They are agents for New York Navi-  
10 gation, your Honor. That is in the depositions.

11 THE COURT: All right. Anything further?

12 MR. MALOOF: I have nothing further of Mr.  
13 Best, your Honor.

14 THE COURT: This would be a good time to go  
15 to lunch. We will adjourn until 2 o'clock.

16 (Luncheon recess.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

A F T E R N O O N   S E S S I O N

MR. MALOOF: May I continue, your Honor?

THE COURT: Yes.

MR. MALOOF: The plaintiff calls Mr. Davies.

W I L L I A M   G   D A V I E S, JR., called as a witness  
on behalf of the plaintiffs, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MALOOF:

Q     Mr. Davies, will you tell the Court what your  
present position is?

A     I am now general manager of Underwriters Salvage  
Company of New York.

Q     And what was your position in February and March  
of 1967?

A     I was with the firm of Courtney, Sullivan &  
Davies, marine surveyors.

Q     And what were your duties in connection with that  
position?

A     To survey cargoes, determine damages, make recom-  
mendations as to possible efforts to minimize loss.

Q     And was it part of your duties also when it was  
possible to obtain the cause of the loss?



1  
2 A When it was possible, yes.

3 Q What did you do before you became a cargo sur-  
4 veyor, sir?

5 A I worked for an insurance company for a couple of  
6 years, and prior to that I sailed.

7 Q In what capacity did you sail?

8 A Mate.

9 Q As a mate?

10 A Yes.

11 Q First mate?

12 A First mate -- from third mate and then first mate.

13 Q Do you have a captain's license?

14 A I had a captain's ticket.

15 Q In March of 1967 were you asked to perform a  
16 job which took you to Iligan City, in the Philippines?

17 A Yes.

18 Q Will you tell the Court roughly how you were  
19 first retained and then what you had to do?

20 A We had a call from one of the insurance under-  
21 writers stating that they had a problem with a vessel with  
22 water reported in one of the compartments, and that in  
23 that compartment there was a rather sizable shipment of  
24 steel in there.

25 Q And what did you do then to comply with the

assignment?

A We thereafter proceeded, or I thereafter proceeded to Japan with the hope of possibly getting on board the vessel at that time. However, the vessel had sailed from Japan just before my arrival, and I then proceeded on to the Philippines, after making some inquiries as to what findings the surveyors in Japan had made.

Q And did you eventually catch up with the SS John Weyerhaeuser?

A Yes, I did.

Q Where?

A In Iligan, in Mindinao, in the Philippine Islands.

Q And had she discharged yet the Iligan shipment from No. 2 lower hold?

A No, No. 2 lower hold had not been touched prior to my arrival.

Q Did you go on board the ship before No. 2 lower hold was discharged?

A Yes, I did.

Q Would you tell the Court in as much detail as you can what you remember you saw?

A When we entered the 'tweendeck first, that had mostly crane parts, cabs, booms, et cetera, although there were some boom sections in the lower hold also.



1 The 'tweendeck cargo was in reasonably good  
2 condition with the exception of some of the crane cabs  
3 showed evidence of entry by reason of tracks of people with  
4 fertilizer on their shoes or feet having gotten into the  
5 cranes.  
6

7 We got into the lower hold and found a con-  
8 siderably different picture. The stow was in a general ---  
9 in a general disrupted situation. The boom sections that  
10 were in the top of the stow had a certain amount of a white  
11 powdery substance on them, from apparent waveaction of  
12 water and fertilizer mixed in the compartment.

13 The cases were in a condition of disintegration  
14 and collapse.

15 Q And were you able just from what you saw when  
16 you first looked in to come to some conclusion as to what  
17 had happened -- not the basic cause but, say, an intermediate  
18 cause which caused all that collapse?

19 A Well, there appeared to be a considerable  
20 accumulation of water in the compartment at some time prior  
21 to my entry into it, intermixed with a white powdery sub-  
22 stance or a substance of some type which had been carried  
23 into the compartment and mixed in the compartment with the  
24 water, and had been deposited on the various items of  
25 cargo in that compartment.

Q Did you try to ascertain what that powder was previously?

A Yes. Well, we knew before we left the United States that the ship had also carried a cargo of tri-sodium phosphate.

Q Do you know where that cargo was carried on the Weyerhaeuser?

A It was carried in No. 3, to my knowledge, and also, I believe, in No. 1 and No. 5.

Q Is No. 3 a separate hold from No. 2?

A No, not --

Q In the lower hold?

A Not on this vessel. The bulkhead between No. 2 and No. 3 had been removed to facilitate handling of large timbers, I imagine, in the lumber trade. A temporary bulkhead had been put in.

Q Did you see that bulkhead?

A Yes, sir.

Q Was it watertight?

A No, it was not watertight. It was made up of various dimension lumber covered with burlap.

Q And were you able to come to some conclusion with respect to that fertilizer and the damage to the Iligan shipment, and if there is any connection between the two?



1 A Well, the deposit of fertilizer on the equipment  
2 did a considerable amount of damage to it.  
3

4 Q Is it part of your job also to come to some  
5 estimate of the amount of the physical damage to cargo on  
6 behalf of your clients?

7 A Yes. We do that in conjunction with either  
8 consignees or people from manufacturers' representatives,  
9 to discuss with them the damages in possible areas of  
10 reconditioning, salvage, et cetera.

11 Q As part of your assignment did you try to  
12 estimate the value of the shipment, only that part of it  
13 which was in the No. 2 lower hold?

14 A We had available to us in the Philippine Islands  
15 copies of invoices, packing lists, and using those and  
16 identifying them by package numbers that were on each one  
17 we were able to come up with a fairly good estimate of the  
18 value of the cargo in that compartment.

19 Q Will you tell us what estimate you came to.  
20 This is in sound condition, of course.

21 MR. DE ORCHIS: If your Honor please, I thought  
22 the damages were to be decided later on.

23 THE COURT: I do not see the need to go into it.

24 MR. MALOOF: May it please the Court, I intend  
25 also to ask at the end of my case to conform the pleadings

2 to the proof. We intend to ask the Court to order a refund,  
3 a partial refund of the freight in this case on the ground  
4 that the cargo was not delivered as accepted, on the theory  
5 of the Louise case and several other cases, and in order  
6 for your Honor to determine that you will have to know the  
7 value and the outside figure of the damage -- not how the  
8 damage was computed.

9 MR. DE ORCHIS: If your Honor please, we signed  
10 a stipulation in the pretrial order in which the parties  
11 agreed that the trial would be based on the stipulation  
12 in the pretrial order. Never has a claim been made on  
13 the freight, neither in the pleadings nor in the pretrial  
14 order. The first time I heard the theory was when they  
15 wrote the brief. It is not part of the case. It was  
16 not pleaded. It was in answer to a claim for return of  
17 freight. It was never made, and I object to it on the  
18 ground that you cannot in the middle of the trial inject  
19 a cause of action which is entirely separate from the  
20 damage problem and which was never pleaded.

21 MR. MALOOF: I believe it is in the memo, your  
22 Honor, the pretrial memo. But that does answer my point  
23 that we can move to amend the complaint to conform to the  
24 proof. This is a very ancient doctrine in the law, and  
25 if you listen to Mr. DeOrchis that doctrine never existed.



1 THE COURT: So far as any such motion is con-  
2 cerned, it is not in order at this time.

3 MR. MALOOF: No, I did not intend to make it at  
4 this time.

5 THE COURT: Maybe later on, but you want to prove  
6 that the freight was paid.

7 MR. MALOOF: Yes.

8 THE COURT: I do not want to get into detail on  
9 the amount of the damages because it has been agreed that  
10 that subject is going to be deferred.

11 Wasn't there something in a general way in the  
12 pretrial order about that?

13 MR. DE ORCHIS: If your Honor please, you have  
14 already ruled on this point.

15 MR. MALOOF: It is not in the pretrial order.

16 MR. DE ORCHIS: But we took this up with your  
17 Honor at a pretrial hearing and they made the same motion  
18 and your Honor denied it.

19 MR. MALOOF: It was not the same motion, so  
20 how could it be the same? I am not making any motion.

21 MR. DE ORCHIS: No, to amend your claim at that  
22 time. It was denied.

23 Am I correct, Mr. Warner?

24 MR. WARNER: Mr. Fish could refresh my recol-  
25

2 lection that such a motion was made, but I do not have our  
3 records.

4 THE COURT: I will sustain an objection to any  
5 testimony at this time as to the amount of the loss, on  
6 the ground that that is something that is to be taken up  
7 later, if we get to that point.

8 Now the pretrial order does state that it is  
9 stipulated when the vessel arrived at Iligan City a portion  
10 of the cargo was found damaged.

11 That is all you need, it seems to me, for present  
12 purposes.

13 MR. MALOOF: Yes, sir. May I prove the sound  
14 value of the cargo in the No. 2 lower hold, your Honor,  
15 through this witness?

16 THE COURT: All right, I will let you do that.

17 BY MR. MALOOF:

18 Q Were you able to come to a determination, Mr.  
19 Davies, of the sound value of the cargo in No. 2 lower hold?

20 A I do not have an exact figure in my mind, but  
21 it seems to me it was in the neighborhood of two and a half  
22 million, something like that.

23 (Mr. Maloof hands to the witness.)

24 A (After examining) Here it is; \$2,600,000.

25 Q Thank you, sir.



1 The document you just looked at, could you identify  
2 that for the Court?

3 A It looks our final survey report.

4 Q Did you have other surveys that you prepared?

5 A Yes. As the handling of this matter progressed,  
6 we issued what we referred to as interim reports to our  
7 principals in the form of correspondence.

8 Q I show you eight further reports on top of the  
9 one you have in front of you and ask you if you can identify  
10 all of them (handing)?

11 A The Xerox copy dated May 5, 1966, is our first  
12 interim report to the underwriter. You will probably  
13 notice these are addressed to one particular underwriter  
14 but copies were sent to all involved.

15 This piece of correspondence is dated July 12,  
16 is our second interim report, again addressed to an under-  
17 writer.

18 Here is another one, dated July the 12th.  
19 This is a covering letter enclosing our bill which is  
20 attached.

21 And there is one dated March 7, 1968, entitled  
22 "Third Interim Report."

23 This is a covering letter dated October 31,  
24 1968 --  
25

Give me a minute to read this one.

(Witness examines.)

A (Continuing) This has to do with a specific section of the claim that the consignee submitted and which we at that point did not see any reason for them submitting a claim.

February 6, 1969, this refers to another claim submitted a considerable time after our visit to the Philippines in the amount of \$62,000, which we indicated we also did not believe to be part of the claim.

This is dated February 5, 1969, a first supplemental report. This has to do with expenses incurred in the forwarding of replacement parts and repaired items back to the Philippines.

MR. MALOOF: Will you please mark these for identification.

(Plaintiffs' Exhibits 16 through and including 24 for identification.)



mdal

Davies-direct

BY MR. MALOOF:

Q Now, these, then, Mr. Davis, are survey maps you prepared subject to the assignment on which you went to Iligan in the Philippines?

A Yes, they are.

MR. MALOOF: I offer them in evidence.

MR. WARNER: Weyerhaeuser has no objection, except that we don't admit the truth of the contents of these reports, and the only one we have seen prior to today has been Plaintiff's Exhibit 17 for identification.

I ask Mr. Maloof to furnish us tomorrow with a Xerox copy at our expense.

MR. MALOOF: Agreed.

MR. DE ORCHIS: I have the same objection, your Honor. I haven't been furnished with these reports. We have had this case two years now, and I have only been furnished with one of them.

Furthermore, the witness on the stand is going to clutter the record with dozens of pages. If there is an opinion he is going to give he should be asked and cross examined on that, rather than my having to study these.

THE COURT: What is the purpose of offering

mda2

Davies-direct

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these?

MR. MALOOF: He is going to be asked, Your Honor, to justify all of these survey reports but these actually go in the ordinary course of business because he is the surveyor, and these are his surveys.

THE COURT: What is the purpose of the offer?

MR. MALOOF: The purpose is to prove not the damage but the facts that he saw in Iligan, the facts that he saw with his eyes when he went aboard that ship, and what happened to this ship.

THE COURT: I will sustain the objection on the ground that no foundation has as yet been laid. You are obviously offering them for the truth of the contents.

BY MR. MALOOF:

Q Mr. Davies, will you tell the Court in detail what you saw when you went aboard the ship in Iligan in No. 2 lower hold?

If you need the surveys to refresh your recollection you are entitled to do that?

A Actually, this was a continuing thing. I keep using "we" meaning myself as part of the firm. We were in continuous attendance during the discharge of the



mda3

Davies-direct

21

vessel, along with surveyor representing the vessel and a number of other people.

The cargo was in a generally very poor condition, showing evidence of a rather severe wetting and contamination by fertilizer. The crates were deteriorating, the contents were severely corroded, rusted. The cargo compartment was a general mess.

As I said, this developed over a number of days of observation and surveying.

Q Did you study any of the log books of this vessel in Iligan?

A We, on conjunction with the surveyor representing the vessel, looked at the log.

Q And did you learn anything from those logs which might lead to the cause of this particular incident?

A There were indications of water entry into No. 3 compartment.

Q Which logs especially, covering what period, did you look at?

A We looked at the deck logs.

Q Covering what period of time, Mr. Davies?

A Primarily the voyage involved.

Q From Baltimore?

A Right.

Q What parts of those logs, if you recollect, led you to the assumption that there was water entering and when did you see the evidence of the entering? For what days, that is? You may refresh your recollection from your survey reports.

A I don't know that we mentioned specific days.  
(Pause.)

Q Perhaps page 7 might be helpful, Mr. Davies. You refer to Tampa there.

A We refer to the fact the clapper valve was below the load line sailing Tampa. And that there was water pressure against it at that time.

Q Why would that be relevant in this case?

A There had been indications through surveyors at Moji that the clapper valve had been found with a crack or fracture or erosion in the casting.

Q And therefore was it significant to you that on leaving Tampa that valve was underwater?

A Yes, it would be an indication that there was water pressure there, and if the crack existed then the possibility of water entry existed.

Q Did you check any other part of the logs, the engine logs?

A No, we didn't go into engine logs at all.



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Q Did you prepare these reports in the ordinary course of your business at that time?

A Yes.

MR. MALOOF: I renew my offer on that basis.

MR. DE ORCHIS: I have the same objection. The report of an expert witness given --

MR. MALOOF: This is a fact witness. He is a cargo surveyor.

THE COURT: What did you do when you went out there, Mr. Davies? Did you examine this hold?

THE WITNESS: Yes. We were in the cargo compartment. I was in as near continuous attendance as you could be on a 24-hour basis.

THE WITNESS: From the day the ship arrived and were on the job after the ship sailed to wind up business that had to be completed before we left Iligan.

THE COURT: Was the No. 2 hold discharged before you left?

THE WITNESS: Yes.

THE COURT: Did you see the goods come out of it?

THE WITNESS: Yes.

THE COURT: Did you examine the goods after

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they came out?

THE WITNESS: Yes. We set up a marshalling area and moved all cargo from No. 2 compartment into that area so individual cases could be opened and examined and a determination made as to whether they were sound, whether they could be reconditioned by Iligan in the Philippines or whether they were possibly fit for return to the United States for refurbishing, or whether they were beyond refurbishing.

THE COURT: You were retained by the insurance company for Iligan Steel Corporation, is that right?

THE WITNESS: Yes, sir.

THE COURT: Was there also a surveyor there for the ship?

THE WITNESS: Yes, a Captain Watts represented the vessel.

THE COURT: You both looked at these things at the same time?

THE WITNESS: We did. We went through the whole thing together.

THE COURT: Was it part of your business to make a report or a memorandum of what you saw?

THE WITNESS: Yes. That is the normal procedure for a surveyor to prepare a report of what we



1 mda

2 observed and what handling was afforded the cargo.

3 THE COURT: Are these documents that are  
4 being offered such memoranda prepared in the course of  
5 your business?

6 THE WITNESS: Yes.

7 THE COURT: What did you do with them after  
8 you wrote them?

9 THE WITNESS: After we wrote them we mailed  
10 them to our principals.

11 THE COURT: I will receive them.

12 (Plaintiff's Exhibits 16 through 24, inclusive  
13 received in evidence.)

14 THE COURT: A lot of this has to do with the  
15 witness' opinion as to the amount of loss, and I am  
16 not concerned with that at this time, as I have said  
17 repeatedly, nor am I concerned, as far as I can see, with  
18 Exhibit 20, which is his bill.

19 MR. MALOOF: Yes, sir.

20 THE COURT: I am allowing these documents  
21 in as regular business records of what he observed as  
22 to the condition of this cargo and the condition of the  
23 vessel. There is a lot of material here really irrele-  
24 vant -- correspondence he has had with various people.  
25 This is a wholesale way of shoveling into the record a

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1 great mass of papers, and I suppose if I were meticulous  
2 I would try to sort it out before I let it in. I am  
3 going to take into account so much of it as seems to me  
4 to be relevant on the theory that I have mentioned  
5 without taking the time to go over it in detail now, and  
6 I am going to ignore the portions of this which are  
7 clearly not regular business records.

8  
9 MR. MALOOF: Yes, sir.

10 I didn't put it in to clutter up the record,  
11 but, as a matter of fact, it is my understanding that  
12 that was the totality of his survey reports, your  
13 Honor, in the case. When you start picking it out  
14 sometimes it doesn't come out the way it started.

15 Incidentally, your Honor, I had during the  
16 lunch hour asked Mr. Van Acklin of Koppers Company to look  
17 through his file -- he has a thick file of papers -- to  
18 look for something raised on the insurance company.  
19 and he came up with what looks like the second original  
20 bill of lading, so if you wish to replace this for the  
21 Xerox copy I put in evidence I have no objection to that.

22 May I show it to you?

23 THE COURT: Yes. But why don't you finish  
24 with this witness before we go into something else.

25 MR. MALOOF: All right.



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BY MR. MALOOF:

Q Mr. Davies, do you know a surveyor named Watt?

A Yes.

Q Was he on this assignment, also?

A Yes. He was surveyor representing Weyerhaeuser.

Q Were you pretty much together all the time?

A Yes, we worked very closely together.

Q Did you have a plan of action together?

A Yes. This all was related to the idea of laying the cargo out where it could be opened where representatives of Koppers and Iligan could look at it and determine which they found acceptable and ready to put into the plant, and that which had to be reconditioned, and that which appeared to be beyond reconditioning.

Q Who was Bernie Watts working for?

A At that time he was an independent surveyor, the same as I. He was with Watts & Company.

Q I mean on this incident?

A He was working on behalf of Weyerhaeuser.

Q How long did you say you were in Iligan on this assignment?

A We arrived there the day the vessel died and stayed, I believe, a day or two beyond the sailing of the

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John Weyerhaeuser, because there was cargo being returned on the Peabody to San Francisco, which arrived either the same day or the day after, I don't know which.

Q When you say cargo being returned, was that part of this cargo?

A It was part of this cargo out of the Weyerhaeuser that we were bringing back on the possibility of having it be reconditioned, and in fact some portion of it was.

Q Roughly, how many days were you in the Philippines on the assignment?

A We were there two to three weeks.

Q You were with Mr. Watts all that time?

A Yes.

Q Working together?

A Yes.

Q Was there any serious dispute between the two of you on how to handle this?

A No.

Q Was there any serious dispute between the two of you on the conclusions you reached?

A No.

Q Was there general agreement of all of the interests involved who were there on the disposition of this cargo?



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1  
2 A Yes.

3 Q Does that include New York Navigation?

4 A Frankly, at this point in my mind I don't  
5 remember who was representing New York Navigation.  
6 There was a fellow by the name of Hurley there, I know,  
7 for a while.

8 Q Harley?

9 A Harley, I guess it was.

10 How long he stayed I really don't know.

11 Q Okay. Were you able to judge by the physical  
12 evidence the approximate height that the water reached in  
13 the No. 2 lower hold from the tank tops down below?

14 A Yes. It appeared to be 14 to 15 feet, I  
15 believe.

16 Q Was it a level line?

17 A No. There was indication of a fair amount  
18 of wave action, if you want to call it that, from the  
19 motion of the vessel, sloshing of water.

20 Q Did that bring it up over 14 and 15 feet?

21 A In some instances it brought it up into the  
22 very top of the stow in the No. 2 lower hold, the crane  
23 section, the boom sections, had a wash of water.

24 Q So that would be practically up to the top  
25 boxes?

1 A Yes, almost up to them. In fact, I think  
2 even the top tier boxes had been hit along the bottom.

3 Q Did you see any evidence in No. 2 lower hold  
4 of the fertilizer which had been in the No. 3?

5 A Yes.

6 Q Would you describe that, please?

7 A There was a considerable residue of it. The  
8 packing cases in many instances were full of it. In  
9 fact, we had to jackhammer several units out of the  
10 compartment with their hammers to break the caked  
11 fertilizer away from the packing cases so we could get them  
12 out.

13 Q You mean with an air hammer?

14 A Yes.

15 Q Why was it?

16 A They were caked in a solid block as though they  
17 'had been cemented in there.

18 Q Are there any photographs of that?

19 A I believe there are.

20 This bottom photograph, No. 215, and photograph  
21 Nos. 216 and 217 show the air hammers in use, and shovels,  
22 and, in fact, in No. 212 you can see a mound of fertilizer  
23 in the square of the compartment.

24 No. 214 shows the fertilizer packed inside of a  
25



mda

Davies-direct

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case.

Q Do you recall an incident when a Mr. Berke went up to look at the clapper valve?

A Yes, Mr. Berke did.

Q Were you there at that time?

A I was there while he was there, yes.

Q Did you see him go up to look at it?

A I don't really remember whether I was present when he went up or not.

Q As I understand it, Mr. Davies, it was necessary to put these different units into different categories -- for example, sound, salvageable, reconditionable, and total loss? Am I right on that?

A Yes.

Q In order to make those categories, did you have general agreement of everyone present?

A We did that, and we also requested through Iligan and Koppers that representatives of the various manufacturers fly out to the Philippine Islands, which they did, and they examined the units in company with myself and Mr. Watts and the various engineering staff?

Q You mean Westinghouse and General Electric?

A Westinghouse, Blaw-Knox, and General Electric.

Q And they came?

mda

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1  
2           A       And they came.

3           Q       What other kinds of conditions do you remember  
4       ber that you might have seen?       Was there any erosion?

5           A       Various parts of your components of the steel  
6       mill were severely eroded, the metallic parts.

7           Q       I show you a document which is composed of six  
8       pages and ask you what that is (handing).

9           A       This is a resume or a schedule of each of the  
10       units involved in the No. 2 compartment identified by --  
11       we use the word "release" number, it is the package number,  
12       indicating supplier, indicating whether they were  
13       accepted as sound, return to the United States, reconditioned  
14       in Iligan or found no commercial value.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 1  
2 Q Do you recall, sir, how many pieces were in the  
3 No. 2 lower hold?

4 A I believe there were 188.

5 Q And out of that number how many were undamaged?

6 A I would have to refer to the list, but I believe  
7 it was 14 or 15.

8 Q Which list -- this one here (indicating)?

9 A Yes.

10 THE CLERK: Is that an exhibit?

11 MR. MALOOF: Not yet. I will identify it.

12 A (After examining) 14.

13 MR. MALOOF: I will identify this document that  
14 Mr. Davies just looked at.

15 (Document marked Plaintiff's Exhibit 25 for Identifi-  
16 cation.

17 BY MR. MALOOF:

18 Q Did you speak with the Captain of the WEYERHAEUSER  
19 when you were in the Philippines?

20 A Yes.

21 Q Do you recall what he said and what you said,  
22 roughly?

23 A Well, he indicated that several days -- two or three  
24 days out of, I think it was Moji, for bunkers, that he had  
25 a feeling that the vessel went down by the head and that she

shb 2

Davies - direct

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was, as he described it, porpoising.

Q As a man who has been to sea, what do you think he meant by "porpoising"?

A I think she had a tendency even though she rose on a crest to go under again, down by the head, let us put it that way.

Q For how many years were you a first mate?

MR. WARNER: I could not hear the question.

(The question was read.)

A I only sailed as mate for about a year.

Q And how many years did you sail altogether?

A Around six or seven.

Q And when you say, "down by the head," what do you mean by that?

A She is deeper in the water forward than she is aft.

Q Is that an unusual situation for a snip?

A Yes. Usually you try to trim them by the stern.

MR. MALOOF: Judge, Mr. Davies and Mr. Best brought back from the Philippines some representative samples of this cargo. I do not want to burden the Court with too much of those, but I will offer one or two of those pieces which I will ask the witness some questions about, and offer them as evidence as representative of what the rest of them



1 khb 3

2 looked like.

3 BY MR. MALOOF:

4 Q Mr. Davies, do you recall bringing back some pieces  
5 of the Iligan shipment?

6 A Actually, what we did was accumulate them in Iligan  
7 and pack them in a wooden case to be air-freighted back.

8 Q Will you come down here, please, and look in this  
9 box and tell the Court whether these are the things that you  
10 sent back.

11 (Witness leaves the stand and examines.)

12 A Yes, they are. They are items identified by tags  
13 that we placed on them in the Philippine Islands.

14 Q I show one item with a tag that says, "Removed  
15 from motor control panel," and ask you whether you took  
16 that from the ship, from the Iligan cargo (handing).

17 A Yes, we did. I selected them and Mr. Best did the  
18 tagging.

19 Q Will you please look through this -- there are  
20 about two dozen items -- and pick an item which is most  
21 representative of the ones that you saw.

22 A Here is a switch from the panel --

23 Q Excuse me, let me identify the first item which  
24 is "removed from motor control panel," it says on the tag.

25 MR. MALOOF: Will you please mark that.

khh 4

Davies - direct

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2 (Document marked Plaintiff's Exhibit 26 for Identification.)  
3

4 MR. MALOOF: This second for identification is a  
5 switch from a motor control panel.

6 (Marked Plaintiff's Exhibit 27 for Identification.)

7 BY MR. MALOOF:

8 Q What is this you are holding in your hand?

9 A These are brushes for a motor which were packed  
10 inside a cardboard box inside a wooden case.

11 MR. MALOOF: We ask that the third thing be  
12 identified.

13 (Marked Plaintiff's Exhibit 28 for Identification.)

14 MR. MALOOF: We will forego the offer of the rest  
15 of it, your Honor.

16 (The witness resumed the stand.)

17 BY MR. MALOOF:

18 Q Mr. Davies, those three items that were taken from  
19 the Iligan cargo which you have just identified, would you  
20 say those are typical of what the damaged parts of the Iligan  
21 cargo looked like?

22 A Yes, they are very representative of the general  
23 component parts of a number of the units.

24 Q And is that why you took those specially?

25 A Yes, we took them as representative.



1 khb 5

Davies - direct

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2 MR. MALOOF: I offer these in evidence, your  
3 Honor.  
4

5 MR. WARNER: No objection.

6 MR. DeORCHIS: I do not have any objection but I  
7 thought that we were trying the liability and that it was  
8 agreed that the cargo was damaged.

9 THE COURT: I hope we are getting to the interest-  
10 ing part soon.

11 MR. MALOOF: We are indeed but this certainly shows  
12 the damage -- look at the corrosion from the fertilizer  
13 (indicating).

14 THE COURT: I will receive them.

15 MR. MALOOF: These are to be marked.

16 (Marked Plaintiff's Exhibit 26, 27 and 28 previous  
17 for Identification, now received in Evidence.)

18 MR. MALOOF: Your witness.

19 CROSS-EXAMINATION

20 BY MR. WARNER:

21 Q Mr. Davies, did you look at the sanitary lines  
22 in No. 3 lower hold of the JOHN WEYERHAEUSER while you were  
23 aboard her?

24 A At the time I was on board her they had already  
25 put cement boxes on.

khb 6

Davies - direct

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2 Q So you could not see that --

3 A I did not see the valves, no, sir.

4 Q Did you go into No. 4 cargo compartment?

5 A Yes.

6 Q What was the condition in No. 4?

7 A As I recollect, it was in good condition.

8 MR. MALOOF: Objection to relevancy, your Honor.

9 THE COURT: Overruled.

10 In good condition, did you say?

11 THE WITNESS: Yes, in good condition.

12 Q And was any of the Iligan cargo in No. 4?

13 A Yes, we had --

14 Q And -- I'm sorry, go ahead and finish. I should not  
15 interrupt you.

16 A I will qualify my statement as to "good condition."  
17 It was as far as water. We had some pilferage in cartons  
18 in that compartment.

19 Q Was there a substantial amount of Iligan cargo  
20 in No. 4?

21 A I would have to refer to my notes, but I think  
22 there was a fair amount.

23 Q Did you go into any other cargo compartments of the  
24 JOHN WEYERHAEUSER in Iligan?

25 A Yes. I believe in No. 1 they had two large



1 khb 7

Davies - cross

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2 journal frames for the ends of the rolls that had to be taken  
3 out, and I observed that discharge.

4 Q What was the condition of No. 1?

5 A It looked good.

6 Q Did you go into any other cargo holds -- 1, 2, 3  
7 and 4 -- what about 5? Did you go into 5?

8 MR. MALOOF: Judge, I object to relevancy. The cargo  
9 was in No. 2 where it out-turned badly. What difference does  
10 it make what the rest of the ship was like?

11 THE COURT: My understanding is that the cargo we  
12 are concerned with was in No. 2 --

13 MR. MALOOF: No. 2 -- No. 2 and 3 are common holds.  
14 But No. 2 is where the damage was, and what are we talking  
15 about No. 5 for?

16 THE COURT: I will allow it.

17 A I frankly do not recollect it.

18 Q What was the general condition of the JOHN  
19 WEYERHAEUSER?

20 A It was in good shape for a Liberty.

21 Q Had she been upgraded, improved --

22 A Yes.

23 Q -- prior to your going on board?

24 A Yes.

25 Q Tell us what you observed.

1 A Well, Liberties, when they were first constructed,  
2 built with wooden hatchcovers; the strongbacks were removed  
3 manually. They had renewed portion of the 'tween deck, as  
4 I remember, and also some areas in the maindeck and put  
5 folding hatchcovers on them.  
6

7 The deckhouse had been considerably improved so far as  
8 quarters were concerned. It was air-conditioned. She was  
9 a considerably better ship than the Liberties that I remem-  
10 ber.

11 Q As a chief officer, what was her general condition?  
12 You have been on vessels. How would you rank her?

13 A I would say she was a well-maintained vessel.

14 Q Are you certain there were no boxes -- that there  
15 was a box on the port bow of No. 3 lower hold of the JOHN  
16 WEYERHAEUSER?

17 A Am I certain that there was a box on the port bow?  
18 no, I am not certain. I know that boxes had been put on it.  
19 It is possible that that box had been removed or was removed  
20 at Iligan.

21 Q On your direct examination you mentioned something  
22 about Mr. Berke going on. What was he looking at -- the  
23 cement boxes or the valve itself?

24 A He was down there to look at the valve. He was  
25 the hull surveyor.



khh 9

Davies - cross

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Q You are a bit vague. Do you recall whether he was looking at the box or the --

A I don't recall. I think my testimony is correct that I remembered Mr. Berke being there and present at the time during our survey.

Q But you did not witness what he did?

A I did not witness his survey.

MR. WARNER: No further questions.

BY MR. DeORCHIS:

Q Mr. Davies, was this temporary bulkhead that was put in between No. 2 and No. 3 --

A Yes.

Q You said it was constructed of lumber. Did that bulkhead go all the way across the hull?

A When they had renovated or altered the vessel on each side of the center line, a portion of the original bulkhead had been left in.

Q So that there was a sort of -- sort of two archways?

A I would say something similar along that line. It came up and then went over to the shell.

Q This bulkhead that was put in, the wooden one, would cover those two openings on each side, but the center was still steel, is that correct?

khh 10

Davies - cross

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1  
2 A To the best of my recollection, yes.

3 Q Had you seen this type of temporary bulkhead before  
4 in your experience?

5 A I have seen temporary bulkheads put in.

6 Q Could you tell us what was the purpose of removing  
7 the steel bulkheads when they renovated the vessel?

8 A In discussions with the crew, they indicated it  
9 was to carry timbers, so that they could handle long timbers  
10 into the compartment and handle them easily.

11 Q Can you tell us how long approximately from forward  
12 to aft the No. 2 hold is, just roughly?

13 A I'm trying to think -- I think they are a couple  
14 of hundred -- just No. 2 alone?

15 Q Just No. 2, to the place where that bulkhead used  
16 to be.

17 A I think a couple of hundred feet.

18 Q Were the wooden bulkheads still in place when you  
19 went on board the vessel at Iligan?

20 A Parts, portions of it were, yes.

21 Q Was there any burlap covering there?

22 A There had been some burlap. There had been  
23 remnants of burlap there.

24 Q They had put a layer of burlap over the wood.  
25



khb 11

Davies - cross

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Q Can you tell us what caused the fertilizer to pass through this bulkhead and get into No. 3?

A Well, fertilizer, we played a little bit with sound fertilizer, got it wet and it became very fluid once it became wet.

Q When it gets wet it gets very fluid?

A Yes.

Q Does it get very slurry?

A Slurry -- that is the word I think I used in my report.

Q And it gets through any crack?

A Right.

Q Am I correct that in walking from No. 2 down aft into No. 3, if I were doing that I would be walking sort of downhill?

A It would depend on how the ship was trimmed.

Q Well, if the ship is on an even keel would the forward end of No. 2, the floor, be a little bit higher than the after end of No. 3?

A It should be.

Q So that if I spilled water at the forward end of No. 2 would the water run back to the after end of No. 3 when the ship is on an even keel?

A Even keel? There should be a slight -- that is

khh 12

Davies - cross

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why they put the sumps there.

Q By "sumps," you mean the bilge wells?

A Yes.

Q The water collects in the bilge wells?

A Yes.

Q And on this ship the bilge well was in the after end of No. 3?

A Right.

Q The bilge well on that ship, did it run all the way across the after end or --

A It had sumps in each corner of your compartment.

Q And by "sumps," do you mean a well from which the water can be pumped?

A Yes.

Q Now, that valve that you say someone told you had a crack in it, where was that located in this hold?

A The clapper valve are just forward of the after bulkhead in No. 3 -- I would say a foot and a half, maybe two feet forward.

Q And how high above the deck of the hold was it?

A They are right up under the 'tween deck.

Q Would you tell us roughly how high is the 'tween deck, if you are standing on the floor of the lower hold?

A If you are standing and looking up? Probably 20 --



1 khb 13

Davies - cross

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2 20 some feet, I guess.

3 Q About 20 feet up from the floor of the hold?

4 A Yes.

5 Q And is there a valve like this on each side of the  
6 ship --

7 A Yes.

8 Q In No. 3?

9 And does the valve go out through the skin of the ship?

10 A Yes.

11 Q And at the skin of the ship is there a non-return  
12 of the clapper valve to keep the ocean water from coming in?13 A The construction of the clapper valves, as I know  
14 them, you have like an elbow, and there is a seat just  
15 forward of the turn that a clapper works against, and the  
16 pressure of the sea water keeps that clapper closed until  
17 there is a sufficient head of water on it to go against the  
18 pressure of the sea water.

19 Q Sufficient heavy weather to keep that --

20 A Sufficient head.

21 Q Will you tell us --

22 MR. MALCOFF: Unless Mr. DeOrchis admits that he  
23 is making Mr. Davies his own witness, he has gone far beyond  
24 direct. This was a cargo survey.

25 THE COURT: I will allow that.

khh 14

Davies - cross

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MR. MALOOF: All right, if he wants to ask questions, it is all right with me.

MR. DeORCHIS: I thought you qualified him as a ship's mate. We are just getting some simple information.

THE COURT: Go ahead.

Q What was this pipe for? What does it carry?

A So far as I know, it was the sanitary lines from the deckhouse.

Q And would that include the toilets in the deckhouse?

A Yes.

Q Now, am I correct that these renovated Liberty ships have about 22 toilets in them?

A I have no idea how many they had on the WEYERHAEUSE. I did not make a head count.

Q But this is the pipe that served the sanitary facilities of the ship?

A Yes.

Q Now, if you are working in that hold, No. 1 lower hold of a Liberty ship like this, is there any difficulty in looking up and seeing this pipe? Is it in the open?

A You would have to go looking for it.

Q No, what I mean is, is there any sheathing or wooden box over this pipe, or is it an exposed piping?

A Well, sometimes there is a metal guard around them.



1 khb 15

Davies - cross

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2 This is formed to the bulkhead.

3 Q But that metal guard does not hide them?

4 A No, it doesn't.

5 Q So if that pipe was leaking it would be obvious  
6 to anybody working in the hold, would it not?

7 MR. DeORCHIS: No further questions.

8 REDIRECT EXAMINATION

9 BY MR. MALOOF:

10 Q Mr. Davies, you testified that in your opinion the  
11 ship had been well maintained. You do not know how the  
12 valves were maintained, do you?

13 A No.

14 Q A clapper valve that you have been testifying  
15 about --16 A My testimony was on the basis of general appearance  
17 and maintenance.18 Q You did make a point that the deckhouse was in  
19 good condition.

20 Now, did you sail on Liberty ships?

21 A Yes, sir.

22 Q Did Liberty ships have a particular problem with  
23 clapper valves that you are aware of, or at least that  
24 might have been common knowledge to sea-faring men?

25 A Well, I --

2 MR. DeORCHIS: Your Honor, if we are going to have  
3 this line of inquiry I think the witness should be qualified  
4 as to how many Liberty ships he sailed on.

5 MR. MALOOF: I will withdraw the question.

6 THE COURT: All right.

7 Q But you had been told, at least, that there was  
8 a leaky clapper valve in the JOHN WEYERHAEUSER?

9 A Yes, sir.

10 Q And from what you saw in the Philippines, you saw  
11 no reason to quarrel with what you had been told, did you?

12 A No.

13 MR. MALOOF: No further questions.

14 THE COURT: That is all.

15 (Witness excused.)

16 MR. MALOOF: May it please the Court, my plan at  
17 this time is to read in the important part of the case,  
18 and the interesting part of the case.

19 There are the three depositions of the Master,  
20 the marine superintendent and the port engineer of the  
21 Weyerhaeuser Company. May I do that?

22 THE COURT: Are you going to read them all?

23 MR. MALOOF: I am going to read most of them  
24 but I would like to read them because that is the meat  
25 of this case.



1 khb 17

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2 THE COURT: All right. Do you have a copy for me  
3 so that I can follow along with you?

4 MR. MALOOF: Yes, I do.

5 May I ask for the original of Captain Dumble's  
6 deposition.

7 (Mr. Warner hands.)

8 MR. WARNER: May it please the Court, may the  
9 entire deposition of Captain Dumble at least be marked for  
10 identification and not received in evidence.

11 THE COURT: You can mark it for identification.

12 He said he does not want to read it all, as I under  
13 stand it -- is that right?

14 MR. MALOOF: I am not going to read it all,  
15 your Honor.

16 THE COURT: You may mark it for Identification,  
17 first.

18 MR. MALOOF: I have no objection to marking any-  
19 thing for identification.

20 Would you please mark the original.

21 (Original deposition of Captain Dumble marked  
22 Plaintiff's Exhibit 29 for Identification.)

23 MR. MALOOF: The full name of the witness whose  
24 deposition I am reading is Harold Irvin Dumble.

25 The deposition was taken on August 4, 1970 at the

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2 offices of Symmers, Fish & Warner.

3 May I go ahead?

4 THE COURT: Yes.

5 MR. MALOOF: On page 5, line 11.

6 "Q In what types of ships have you sailed?

7 "A Liberties, C2's, C1's, mariners, Victories,  
8 never been on a tanker."

9 Page 6, line 16:

10 "Q And did you join the S.S. John Weyerhaeuser  
11 as master?

12 "A Yes.

13 "Q Can you tell us when and where you joined that  
14 vessel?

15 "A Well, it was in June of 1966, Portsmouth,  
16 Rhode Island.

17 "Q And having joined her as master where did  
18 the ship go?

19 "A Well, we went from there down to Philadelphia  
20 from Philadelphia to Norfolk, to Hopewell, Virginia to load  
21 a load of ammonia sulfate for India."

22 Page 7, line 11:

23 "Q You discharged completely at Medres?

24 "A Yes.

25 "Q You came unballasted?



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"A Yes.

"Q Where did you go from there?

"A We left there for Singapore, after leaving Singapore we proceeded directly to Portland, Oregon.

"Q Did you receive any notices of inspection of the vessel to be made upon your return to Portland?

"A Yes, we knew the ship was going to be dry-docked and go on annual inspection.

"Q Can you tell us whether that was done?

"A Yes, it was."

Page 8, line 10:

"Q How long did that take, that work?

"A I think we were on drydock for five days."

Line 16:

"Q If so, will you tell us the circumstances of that?

"A Mr. Baumgartner, the marine superintendent, was in the mess room with Captain Rohnberg."

Line 22:

"MR. MALOOF: Can you establish what the date of this annual inspection is?"

Page 9, Mr. Fish responds to that: "October 21, 1966."

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2 The bottom of page 9, line 25:

3 "Q And you were talking to Mr. Baumgartner,  
4 the marine superintendent, and Commander Rohnberg came in?

5 "A Yes."

6 Page 11, line 21:

7 "Q Did you personally examine No. 3 cargo hold?

8 "A Not in the drydock then, but during the  
9 voyage I had been in that cargo hold."

10 Page 12, line 22:

11 "MR. MALOOF: You mean on the whole voyage to  
12 Madres and back you had no entry of water in the ship?

13 "THE WITNESS: The bilges did a couple of times  
14 during the voyage, I can't recall how many times, did show  
15 water in No. 3 port bilge."

16 Page 14, line 4:

17 "Q From Portland, Oregon what was the employ-  
18 ment of the vessel?

19 "A From Portland, Oregon we took a full load of  
20 lumber to the East Coast.

21 "Q Do you recall where that was consigned?

22 "A I think we went to Boston and then down to  
23 Portsmouth, Rhode Island, and then from there we went down  
24 Baltimore, went on time charter to New York Navigation.

25 "Q At Baltimore were any surveyors, inspectors,



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aboard the vessel?

"A Yes.

"Q Can you tell us who they were?

"A Well, Captain Rynbergen was for Weyerhaeuser, John Rohnberg; for New York Navigation, I don't know who was there, but a representative was present. I don't know Augie's last name, he was present, he was the one who signed the time charter. He was the one who put the false bulk-head between No. 2 and 3."

Page 16, line 19:

"Q Did you load at Tampa?

"A Yes, we loaded fertilizer there.

"Q And from Tampa you sailed for Iligan?

"A No, we went from Tampa to Cristobal, from Cristobal to Moji, Japan for bunkers, and then to Mokpu, Lorea. Then we came back from Mokpu for bunkers, and then from there to Iligan City."

Page 19, line 3:

"Q Was there any unusual occurrence on the passage from Tampa to Cristobal?

"A Yes, we were going down to Cristobal where we had engine trouble, we had a cracked high-pressure cross-head block, and we did show some water in the bulges.

"Q What did you do about that?

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2 "A Well, we went to the shipyard in Cristobal  
3 to have the engine repaired, and we pumped out the bilges."

4 Page 20, line 9 -- no, excuse me, page 19, line  
5 23:

6 "Q Did you make any report to the company, to  
7 surveyors or agents at the Panama Canal concerning pumping  
8 of bilges?

9 "A Not at the Panama Canal we didn't.

10 "Q Did you have discussions with the engineer  
11 concerning it?

12 "A Yes, I did have discussion with the engineer.

13 "MR. MALOFF: The port engineer?

14 "THE WITNESS: The chief engineer.

15 "A When we were bunkering at Cristobal we were  
16 taking fresh water. During the process of bunkering we  
17 always had the carpenters on the bilges in case there was  
18 a leak in the bilge tank we could confine it first in the  
19 bilges. About nine o'clock that night we had two feet of  
20 water in the No. 3 port bilge."

21 Continuing at line 18:

22 "THE WITNESS: No. 3 port bilge.

23 "A About ten o'clock he came up on the next  
24 sounding and he reported about three and a half to four  
25 feet. So I told him to take another sounding and let me know



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"He came back about half an hour later and said we had about six feet in there. So, I went down with Chips, the carpenter, and we took another sounding, and this time I tasted the water, and the water proved to be fresh water.

"So I sent to the chief engineer and I asked him, 'How come we are getting fresh water in that port bilge?'

"It seemed every time we took fresh water, we would get fresh water in that bilge."

Line 18:

"Q When was the first indication that you had of serious entry of water into No. 2 and 3 holds?

"A Not until I got to Moji; Moji, Japan.

"Q Will you tell us the circumstances?

"A We got to Moji, I remember I wanted to pick up 1200 tons of bilges"

"That should be 'bunkers' probably the Captain said 'bunkers.'"

"because I sailed on a tropical draft from Cristobal and I was going to pick up 1200 tons to take me all around through Iligan City and back home. I had the second mate take the draft at the quarantine anchorage, he came up and showed me the draft, and we were on our summer marks. I said there must be something wrong. Well, there was quite a bit of swell running. I said we will take it when we get

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2 to the bunkering anchorage at Moji. It proved to be the  
3 same summer draft.

4 "I called the mate and I told John, I said, 'You  
5 better check your cargo holds again, there is something  
6 wrong.' I said, 'There is something wrong some place.'

7 "He came back to me, he told me, 'All the cargo  
8 has disappeared in No. 3."

9 "I said, 'What do mean, it disappeared in No. 3?'

10 "I said, 'You better check the other cargo.'

11 "Then he told me we had about 14 feet of water in  
12 No. 2 lower hold.

13 "Q Do you have a separate sounding well for  
14 No. 2 hold in that vessel?

15 "A No, No. 2 and 3 are a common hold."  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



mdal

"Dumble

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"Q And where is the bilge, the sounding apparatus for the common hold?

"A It is at the after end of the No. 3 hatch at the outside passageway."

Line 12:

"Q What was discovered with reference to the water?

"A It was found out that the port sanitary storm valve had a hole in the pipe, was an inch and a quarter long by a quarter inch wide.

"Q Now, where was that?

"A No. 3 lower hold in the after end.

"Q Where with reference to the after bulkhead, to the side of the ship?

"A It is at the skin of the ship, the after port corner approximately 18 feet above the deck.

"Q That is the bottom of No. 3 hold?

"A It wouldn't be the bottom of No. 3 hold. The bottom of the bilge. When Weyerhaeuser reconverted the ships they put wing tanks in there, the wing tanks are approximately two pallet boards of lumber high.

"Q How high would that fitting be above the general floor?

"A About 22 feet.

1 "Q And do you know the approximate draft, mean  
2 draft which that fitting would be submerged?

3 "A 25."

4 Line 16:

5 "A We put a cement box around it and that was it.

6 "Q Do you recall any other cement boxes were  
7 placed in the hold?

8 "A No, just around that one storm valve.

9 "Q Was there any trouble with the starboard?

10 "A No trouble with the starboard.

11 "Q You don't recall any?

12 "A There was no trouble with the starboard.

13 "Q From there what happened?

14 "A Well, then we proceeded from Moji to Mokpu,  
15 Korea. On the way over there that cement box was  
16 leaking. So I had the chief engineer take the No. 2  
17 wing tank that was empty, ballast it with salt water to  
18 throw a starboard list on the ship of a degree and a half  
19 to bring that sanitary storm valve out of the water.

20 "Q What was done when you arrived at Mokpu ---

21 "A As far as --

22 "Q -- these fittings were concerned?

23 "A As far as the fittings were concerned we had  
24 a Korean ABS representative down, and that sanitary storm  
25



mda3

"Dumble-

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valve was -- we ripped off the cement block, and a new cement block was installed in there. I don't think they renewed the pipe, no, just the cement box.

"Q Do you know if any repairs were made to the valve?

"A You mean the clapper valve?

"Q Yes.

"A No, there were no repairs made to the clapper valve.

"Q What happened then?

"A After Mokpu we proceeded to Iligan City.

"Q And then?

"A We went back to Moji for bunkers, then down to Iligan City."

Line 12.

"Q Can you tell us generally who was there at Iligan?

"A Captain Watts represented Weyerhaeuser, and a Captain Davis from New Jersey here some place represented New York Navigation.

"Q Any attorneys aboard?

"A Yes, there was a representative of Weyerhaeuser aboard, in Iligan City, and New York Navigation had a lawyer out there, but they wouldn't let him come aboard

1 the ship, his name was Mr. Donovan.

2 "Q Did he come aboard at any time?

3 "A Yes, he came aboard for two hours, he said he  
4 had another case and he wanted to look at the shaft alley  
5 door there. He asked if it was all right because he had  
6 a case pending and he wanted to take a look at it. I  
7 said it was perfectly all right with me."

8 Page 29, line 6 --

9 MR. DE ORCHIS: Could we have a stipulation  
10 that the Mr. Donovan is Mr. Donovan from your firm?

11 MR. MALOOF: Yes, I'm prepared to stipulate that

12 "Q Would you tell us what duties a master has of  
13 reporting to the shipowner or the charterer?

14 "A Well, if he finds anything wrong it is his duty  
15 to report it to the owner or the charterer, if he knows  
16 of anything wrong with the ship."

17 By the way, what we read previously was direct  
18 examination. This is cross examination starting now.

19 "Q When you say anything wrong, do you mean any--  
20 thing abnormal?

21 "A Anything that would be abnormal, yes.

22 "Q Or unusual?

23 "A Or unusual.

24 "Q And was it your practice to comply with that  
25



1 mda5

"Dumble

2 duty?

3 "A Yes.

4 "Q What is the main purpose of sending the log  
5 books to the home office?

6 "A So they can read them over and see how the  
7 trip went during the voyage.

8 "Q And did you comply with that duty regularly?

9 "A Yes.

10 "Q About when would you send the log book for a  
11 particular voyage?

12 "A When the voyage was completed then the log  
13 books would be sent.

14 "Q Well, suppose there was something unusual  
15 to report during a voyage, how would you do that?

16 "A Send them a wire.

17 "Q By cable?

18 "A Yes.

19 "Q I would like you to find the log book for that  
20 first voyage to Madres carrying ammonium phosphate?

21 "A Here at Hopewell, Virginia.

22 "Q What is the date of that?

23 "A This is June 20, 1966.

24 "Q Now, Captain, just leave that page open,  
25 please.

dma6

"Dumble

"Would you say that recurring entry of water into one particular hold, and not into others, would be a normal or an abnormal situation?

"A Well, I would say it would be an abnormal situation.

"Q And would that be the type of situation you would report to the shipowner?

"A Yes, I would.

"Q Now, will you go through the log book and read us the bilge readings starting with the beginning of the voyage, that first voyage, from the No. 3 port bilge?

"A No. 3 port bilge?

"Q Yes.

"A A.M. six inches, three inches; P.M. zero and three.

"The 21st, port bilge two inches, starboard nothing; P.M., two inches port bilge, starboard nothing.

"Wednesday, A.M. two inches and zero; P.M. two inches and zero.

"Q Starboard?

"A Starboard zero.

"Q Starboard still zero?

"A Yes.



mda7

"23, port two inches zero, two inches and zero.

"24th, port two, starboard zero; port two starboard zero.

"Q What month are we in now?

"A June.

"June 25th, port one starboard zero, port one starboard zero.

"The 26th, port two starboard zero; port three starboard zero.

"The 27th, port three starboard zero; port three starboard zero.

"The 28th, port three starboard zero, port three starboard zero.

The 29th, port zero starboard zero, port three starboard zero.

"The 30th, port two starboard zero, P.M. port zero starboard zero.

"July 1st, port two starboard zero, port two starboard zero.

"July 22" -- it should be July 2 -- "port two starboard zero, P.M. port two starboard zero.

"July 3, port three starboard zero, P.M. port three starboard zero.

"July 4th, Port two starboard zero, port two starboard zero.

"July 5th, port zero starboard zero, port one starboard one.

"July 6, port three starboard zero, port three starboard zero.

"July 7th, port bilge A.M. one inch starboard zero, P.M. port one starboard zero.

"July 8th, A.M. port three starboard one, P.M. port three starboard one.

"July 9th, A.M. port three starboard one, P.M. port three starboard one.

"Q If I may interrupt you, Captain.

"You are following the readings of the bilges as the captain?

"A Yes.

"Q And you are not concerned yet?

"A No.

"Q Despite the fact that there seems to be a continual reading on the port side but not on the starboard side?

"A When you have water in the bilges, and you have two inches or three inches, nine to ten changes the engineers can't pump it out anyway. Your suction doesn't



1 dma9

"Dumble

2 go down that far to the deck.

3 "Q The difference between port and starboard  
4 doesn't excite you yet?

5 "A No.

6 "Q Go back to it, please. You don't have to spe  
7 time reading where it is only two or three. Let us  
8 know if there is an increase during the voyage, say  
9 of above four.

10 "Was that a full load on this trip to Madres?

11 "A Yes.

12 "July 13th we had on the port on the P.M.  
13 sounding we had five inches.

14 "Q What date is that?

15 "A July 13th.

16 "Q On the port side?

17 "A Yes.

18 "Q Anything on the starboard?

19 "A Nothing on the starboard.

20 "Then on July 15th we had another five inches  
21 in the port.

22 "Then on the 16th we had six inches on the  
23 port A.M., six inches the P.M.

24 "Q Nothing on the starboard side?

25 "A Nothing on the starboard.

"On the 17th we had six inches on the port,  
nothing on the starboard, P.M. six inches on the port,  
nothing on the starboard.

"On the 18th we had four inches in the port,  
nothing on the starboard, the P.M. we had five inches on  
the port, nothing on the starboard.

"Then again on the 21st, A.M. sounding on  
the port we had five inches on the port, nothing on the  
starboard.

"On the 23rd we had six inches on the port,  
nothing on the starboard, six inches on the port, nothing  
on the starboard.

"July 24th we had six inches on the port,  
nothing on the starboard, six inches on the port, nothing  
on the starboard.

The 26th we had four inches on the port,  
nothing on the starboard, P.M. four inches on the port,  
nothing on the starboard.

"Q Are you pumping the bilges all this time?

"A Like I say, when you get three inches, or  
four inches, nine or ten chances the engineers won't even  
bother with it, they can't get it.

"Q How about five or six inches?

"A Five inches they could get.



mdall

"Dumble

"Q Were you pumping at this time?

"A I presume they were pumping.

"Q Doesn't the logbook say so?

"A No.

"Q You don't put that in the log?

"A No.

"Q That would be in the engineering log?

"A Yes.

"Q We can check that later?

"A Yes. We usually tell them to. There is a sign in the engine room. When the carpenter takes the soundings he will put the markings down. He will notify the engineer what bilges to pump.

"Then on July 31 in the lower hold on the port side we had seven inches in the port, nothing on the starboard. On the P.M. we had four inches on the port, nothing on the starboard.

"August 1 we had five inches on the port, nothing on the starboard, three inches in the port, nothing on the starboard on the P.M. soundings.

"Now, Colombo to Madres, on August 3 --

"Q When you were in Colombo what were you in there for?

"A Bunkers and water.

mdal2

"Dumble

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"We had 15 inches on the A.M. port, nothing on the starboard. The P.M. sounding had 13 in the port, nothing on the starboard.

"Q How deep are the bilges?

"A 18 inches.

"Q That is pretty close to the top?

"A Yes.

"Q Did you do anything?

"A We pumped them right out.

"Q Pumped them right out?

"A Yes.

"The next morning it showed, August 4, one on the port, two on the starboard, one on the port, two on the starboard.

"We are now at anchor, Madres. At Madres lower hold on the 14th of Madres we had 14 inches on the port, three on the starboard, P.M. we had seven on the port, six on the starboard.

"Q Is that at Madres?

"A Yes.

"Q What did you do at Madres?

"A We discharged fertilizer.

"Q Did you do anything else, take on bunkers?

"A We only took 200 bunkers of draft at Madres.



mdal3

"Dumble

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I will have to check the engineer's log book about taking fresh water."

Page 38, line 12:

"Q Is that where the fresh water tanks are, the bottoms?

"A Fresh water tanks, yes. When they reverted these ships they brought them from the old storerooms down there, the domestic tanks and put them in the engine room.

"Q Underneath the engine room?

"A On the after end of the engine room on the port and starboard side.

"Q Is that where the fresh water tanks are?

"A Yes.

"Q And what holds is the engine room next to?

"A 3 and 4. Forward end of No. 4 and after end of No. 3.

"Q Does the fresh water tanks go under No. 3 at all?

"A No. But your manifolds are on the forward end of the bulkhead between No. 3 and the engine room.

"Q What do you mean by manifolds?

"A Where they open up the manifolds to run into the water tanks.

mda

"Dumble

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"Q The tanks themselves are under the engine room?

"A No, these tanks weren't exactly under the engine room. They raised above the double bottoms.

"Q In the engine room?

"A On top of the tank tops right there.

"Q But in the engine room, not in the cargo compartments?

"A Yes.

"Q The only thing in the cargo compartments was this valve?

"A What valve?

"Q No. 3, the manifold you are talking about.

"A The manifold valve is in the engine room. We have a bulkhead separating No. 3 hold and the engine room.

"Q That is a watertight bulkhead?

"A Yes. It is on the after end of that bulkhead.

"Q In the engine room?

"A Yes.

"Q What is in the cargo compartment with fresh water?

"A Nothing in the cargo compartment with fresh water."



mda

"Dumble

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Line 16:

"Q Will you continue with the bilge readings?

"Before you do that you might check August 3rd and see what went aboard the ship, what kind of supplies you took aboard, in the engineer's log.

"A August 3rd?

"Q Yes.

"A August 3rd, received from Standard Oil Company 1849 barrels of fuel, water on deck 8.15 to 8.35, pump out No. 3 port cargo hold.

"Q What does water on deck mean, Captain?

"A I don't know. We have water on deck. Maybe we are heaving up the anchor.

"Q Any indication of fresh water being put aboard the ship on August 3rd?

"A No, there isn't.

"Q So may we assume then that no fresh water was put aboard the ship on August 3rd?

"A Yes.

"Q On August 3rd you just testified the port bilge No. 3 was 15 inches and 13 inches?

"A Yes.

"Q From the fact why would you say there was such an increase in the No. 3 port bilge?

"A We had water on deck. The mate might have been washing on the deck and the carpenter didn't get the sounding plug on right. Many times they don't put that sounding plug ontight.

"Q You don't know what the water on deck is?

"A No, I don't.

"Q You are in port, aren't you?

"A Let me look through this.

"Q How was the weather on August 3rd?

"A August 3rd?

"Q Yes.

"A We had no weather at all, you had northwest to west winds, force 3.

"Q No rain?

"A No, partly cloudy."

Line 14:

"Q You don't know what the water on deck means?

"A I presume it is for washing down the anchor chain.

"Q It goes down in the sea?

"A Yes.

"Q That couldn't account for the bilge readings, could it?

"A I don't know. I don't know.



1 mda  
2 "Q You are saying it could have leaked from the  
3 deck into the bilges on the John Weyerhaeuser, the deck  
4 could be leaky too?

5 "A The deck wasn't leaky.

6 "Q Do you know how the water got into the bilges?

7 "A No, I can't tell you how the water got into  
8 the bilges.

9 "Q Did you investigate it?

10 "A We couldn't get down into the cargo hold to  
11 investigate it.

12 "Q How many years were you on Liberty ships?

13 "A Quite a few.

14 "Q How much trouble have you had with clapper  
15 valves on Liberty ships?

16 "A None.

17 "Q Have you ever seen any rust away?

18 "A Never saw any.

19 "Q You found it on this ship?

20 "A This one was found to be rusted away.

21 "Q Not before?

22 "A Not before.

23 "Q Now let us go on.

24 "No. 3 port bilge, check the pumping in  
25 the engineer's log for July 9, and let me know what days

1 mda

"Dumble

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2 in July you were pumping the No. 3 port bilge?

3 "A July 9?

4 "Q Starting with July 9.

5 "A July 9, pumped out No. 3, No. 4 port cargo hold  
6 bilges.

7 "Q 3 and 4?

8 "A 3 and 4, that is the 9th.

9 "Q Go to the 13th, Captain.

10 "A The 13th?

11 "Q Yes.

12 "A Pumped out No. 3 port cargo hold bilge on the  
13 13th.14 "Q To save a little time, Captain, what I want at  
15 this time is an admission from you that the No. 3 port  
16 bilge required much more pumping than any other?

17 "A That it did.

18 "Q At this voyage, these two voyages before the  
19 one we are talking about?

20 "A Yes.

21 "Q That is true?

22 "A Yes."

23 Page 45, line 5:

24 "Q I thought they don't bother with three inches?

25 "A Yes. A lot of times with four inches they



1 mda

2 don't.

3 "Q It has to be a lot more?

4 "A When you got up to five inches to ten inches  
5 then you start pumping. If you get three or four  
6 inches, a lot of times they lose suction with the pump.

7 "Q The fact that the No. 3 bilge required so  
8 much pumping you don't say it was unusual?

9 "A Not unusual because it only had three or four  
10 inches.

11 "Q They were still pumping, and they start at  
12 between five and ten?

13 "A Here is no 4, August 3, it had five inches on  
14 the port and zero on the starboard.

15 "Q My only point is the difference between the  
16 No. 3 port bilge and the others, that is my only point,  
17 that it was a significant difference?

18 "A Yes, that No. 3 port required more pumping than  
19 the other bilges.

20 "Q Would that be significant to you as the cap-  
21 tain?

22 "A Yes.

23 "Q There might be a reason for it?

24 "A There might be a reason for it, that is right.

25 "Q Did you do anything to investigate it?

mda

"Dumble

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1 "A I went to the chief engineer and I asked him  
2 that every time we seem to take fresh water this bilge  
3 would get more water in it than any other, the port one.  
4 When we discharged a full load of cargo at Madres it showed  
5 no evidence of any leakage in that hold at all.

6 "The mate and I went down there all through  
7 that cargo hold to see if we had any leakage. When  
8 we sailed from Madres and came back in ballast and got  
9 back to Portland, Oregon, I told this to our marine super-  
10 intendent, that this was showing water in the bilges, to  
11 check it out. I wanted to make sure that the plate down  
12 there wasn't cracked.

13 "Q When was that conversation?

14 "A In Portland, Oregon after return from Madres.

15 "Q Who did you speak to?

16 "A Our marine superintendent. I wanted him to  
17 check the plate on the port side. I told him that this  
18 bilge was showing water, and we had to keep pumping it  
19 out. It usually showed the most after we took fresh  
20 water.

21 "Q You did make a report to the shipowner through  
22 Mr. Baumgartner?

23 "A Yes.

24 "Q Who was the marine superintendent?



1 mda  
2 "A Yes.

3 "Q How high was his position in Weyerhaeuser at  
4 that time?

5 "A Marine superintendent. In charge of repairs.

6 "Q In charge of repairs to the vessel?

7 "A Yes.

8 "Q Did he report to the shipowner, or was it  
9 his duty to report it?

10 "A He is the repairman for Weyerhaeuser, he takes  
11 care of all repairs.

12 "Q In your opinion when you report to him you  
13 are reporting to the shipowner?

14 "A Yes."

15 Page 49, line 2:

16 "Q I would like to know the dates of the fresh  
17 water?

18 "A We took fresh water on the 11th in Madres.

19 "Q What month are we talking about?

20 "A August 11th. That would be the 12th,  
21 August 12th.

22 "Q August 12th?

23 "A Yes, taking fresh water the 12th.

24 "Q Where else did you take on fresh water?  
25 Any more in Madres?

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"Dumble

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"A The 12th and 13th.

"Q The 13th?

"A 12th and 13th, yes.

"Q While you are there check the copy for those dates, please, for No. 3 port bilge, August 12th and 13th; was there any pumping?

"Was the cargo all out of the ship?

"A No, we just got alongside the dock.

"Q She was still loaded?

"A Yes.

"Topped off No. 4, pumped out No. 3 port cargo hold on the 12th.

"Q What was the bilge readings for No. 3?

"A On the 12th?

"Q Yes.

"A 14 and three, and seven and six.

"Q Let us go to the 13th, August 13th.

"A August 13th it was 15 and 10 in the A.M. zero and two in the P.M.

"Q When was that discharge ended in Madres?

"A The early part of September.

"Q It went through August?

"A Yes, we were there for 30 days. We put it out to anchor a couple of times.



"September 7th we sailed from Madres to Singapore.

"Q And the discharge then must have been completed about the 6th or 7th of September? Check that for me, please.

"A Well, it was finished at 4 A.M., finished cleaning No. 3, all cargo was out at 10.20 P.M. on September the 6th.

Page 51, line 3:

"Q Let us check Singapore?

"A We arrived September 14th at Singapore. Nothing in there for taking water in Singapore.

"Q Then where did you go?

"A To Portland, Oregon.

"Q Was there a significant entry of water into the ship on the voyage east across the Pacific?

"You came east, I assume?

"A Yes.

"We had three inches starting September 23, 24th.

"Mr. Fish: Three inches you say, Captain?

"The Witness: Three inches.

"A It commenced again on October 1 we had two inches, and the 2nd we had two inches.

"Q. Significant. Is there any significance in the voyage across the Pacific?"

"A. It should be "significant readings," I think.

"A. No.

"Q. There was no more of the 10, 15 inches, was that?

"A. No.

"Q. Now, you're in Portland, and you sat down with Mr. Baumgartner?

"A. Yes.

"Q. He came aboard the ship?

"A. Yes.

"Q. Did you give him any written report?

"A. No, it was told to him verbally. We had to go to the Chester Shipyard, and we renewed a plate on the starboard side No. 3, and this was why I wanted him to check that port side because they never renewed that plate. Due to having a new plate and old plate, I thought perhaps we might have gotten a crack in that port plate.

"Q. Was it checked?

"A. It was checked.

"Q. Was there a crack in it?

"A. No, it was even audio gauged.



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"Q Will you tell us in your own words what you said, as best you can remember, to Mr. Baumgartner?

"A I told him that this port bilge was showing water, you see. I said to him, 'It seems that every time we take fresh water that bilge fills up, we get an excessive sounding, I want to know if we could have blowback from the manifold into that bilge.'

"He said he would check it out. He checked it out and he said that there was nothing he could find that would throw back the fresh water into that bilge.

"Q He said it didn't happen the way you thought?

"A Yes.

"I wanted him to check the plate.

"Q How about checking the clapper valve, no one thought of that?

"A The clapper valve I assumed was checked by the Coast Guard when he checked the sanitary storm valve.

"Q You didn't check it?

"A No.

"Q Mr. Baumgartner didn't check it?

"A I don't know if he checked it or not."

Page 54, line 5:

"Q And you put a full load of lumber?

"A Yes.

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"Dumble

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"Q When did you start loading the ship with  
lumber and when did you end?

"A I will have to check this again. That would  
be in October some time. It would be the end of Oc-  
tober.

"To the 21st we were on the dry dock in  
Portland, Oregon. Then we went from there to Longview,  
Washington.

"Q On October 21?

"A Yes. Commenced loading October 22.

"Q And when did you cease?

"A At Longview?

"Q Yes.

"A 0140 A.M. on October 23.

"Q Just one day?

"A One day.

"Q Do you load lumber pretty fast?

"A Yes.

"Q Did you take fresh water on on the West Coast  
while you were there, Portland, Longview?

"A I presume we did.

"Q When, please?

"A I have shore water to reefer plant here.

"Q That is not fresh water that you are talking



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"Dumble

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about, is it?

"A It would be fresh water.

"Q But it doesn't go into those same tanks?

"A It would go into the reefer tank.

"Q It wouldn't have anything to do with the No. 3 port bilge?

"A No. That would be for a sanitary line anyhow.

"No there is nothing on the 23rd taking water in Portland.

"Q You didn't take any at all on the West Coast?

"A We must have taken some. But there is nothing in the log book to show.

"Q Nothing in the log book to show?

"A That is correct.

"Q Now, will you look at November 14th, Captain?

"A November 14th?

"Q Yes.

"A Yes.

"Q Where is the ship now?

"A From Wilmington towards the Panama Canal.

"Q She is at sea?

"A Yes.

"Q What is the reading for No. 3 port bilge?

2 "A 16 on the port side, 20 on the starboard,  
3 ten on the port in the afternoon and three on the star-  
4 board.

5 "Q On November 14th?

6 "A On November 14th.

7 "Q And the 17th?

8 "A The 17th it was zero on the port side, 13 on  
9 the starboard, zero on the port side, 13 on the star-  
10 board.

11 "Q On the 18th?

12 "A On the 18th it was 14 on the port, 13 on the  
13 starboard, 14 on the port in the afternoon and 13 on the  
14 starboard on the 18th.

15 "Q 24 puts it over the bilges?

16 "A Yes.

17 "Q That puts it into the cargo hold?

18 "A Yes.

19 "Q You are at sea now?

20 "A With a full load of lumber.

21 "Q You would say that had nothing to do with  
22 loading fresh water at that time; is that correct?

23 "A No.

24 "But on November 13th we had ballasted No. 3  
25 double bottoms port with salt water.



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"Dumble

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"Q What does that mean?

"A It is a possibility that it leaked into there,  
I don't know.

"Q Let us add up the possibilities. You said  
first of all the deck might have leaked. Now you are say-  
ing the ballast tanks might have leaked?

"A I didn't say that.

"Q That is from Madres?

"A I said the cap from the sounding plug might  
not have been put on securely.

"Q You don't know that?

"A No, I don't know that.

"Q And you don't know that this ballast tank  
leaked either?

"A No, I don't know."

Page 59, line 8:

"Q That quarter inch bothers me. I think Mr.  
Handle said it was a four-inch hole?

"A This was the reading in Moji, Japan. I  
measured that hole down there. I was surprised the size  
of this hole could get so much salt water into that hold.  
But when it was leaking from Moji to Mokpu when I was down  
that hold, and under pressure, it was like someone  
had a fire hose going through there.

1           "Q     The force of the sea?

2           "A     Yes."

3                     Line 22:

4           "Q     Have you heard of other captains having diffi-  
5 culties?

6           "A     I heard on Liberty ships that they have had  
7 trouble with them.     In fact, I think it was a Greek ship  
8 that was lost with a full load of scrap iron.

9           "Q     With clapper pipe trouble?

10          "A     The sanitary pipe had a hole in it.     If that  
11 clapper valve is off, as long as that pipe is solid  
12 there would be no entry of water getting into that cargo  
13 hold.

14          "Q     As long as the pipe is solid?

15          "A     Yes.

16          "Q     And wasn't this storm valve found frozen?

17          "A     It wasn't found --

18          "Q     By rust in it?

19          "A     It was found in Iligan City by the Lloyd's  
20 inspector that it was at an angle.

21          "Q     Allowing the entry of water in?

22          "A     That is right.

23          "Q     So can we say a fact for the Court that you  
24 had a tremendous entry of water from the West Coast to the  
25



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"Dumble

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East Coast carrying lumber?

"A In the bilges in the port, the 24 inches for those three days?

"Q Yes.

"A I would say we had an excessive amount.

"Q That would be an unusual occurrence?

"A 24 inches in there for those few days. Yes.

"Q You would call that an abnormal voyage?

"A I wouldn't call it an abnormal voyage. This happened in many ships when you get in there and you have a great amount of sweat. We had a full load of cargo of lumber and that sweats.

"Q It was unusual but not abnormal?

"A Yes."

Line 15:

"Q What was the highest that it got during this voyage, the No. 3 port bilge? Was 24 the highest?

"A Yes.

"Q Were the pumps used pretty regularly on this voyage to the East Coast?

"A From Cristobal to Boston we did, we pumped them out..

"Q Regularly?

"A Ten inches the 19th, and it shows nothing on

mda

"Dumble

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the 20th, and then on the 21st it shows 12 and 14, and  
on the 22nd it shows 12 and 14.

"Q How are the other holds all this time, Captain?  
Did they show 24 inches too?

"A No."

Line 13:

"Q No. 3 is the only one that went over the bilges  
into the cargo department; is that correct?

"A Yes.

"Q But you had already told the marine superintendent  
anyhow about the ship, is that correct?

"A Yes.

"Q Perhaps you didn't feel it necessary to repeat  
it?

"A No."

Page 63, line 9:

"Q You figured it was caused by sweat?

"A I figured a lot of sweat was going on down there.

Page 69, line 16:

"Q Now, on the 14th you have No. 3 on the port  
side 12 and zero, 12 and zero, No. 1 you have eight and  
five and six and five.

"Q This is on the way to Baltimore?

"A Yes. We are arriving at Baltimore now."



Page 70, line 3:

"Mr. Fish: May I suggest we have an arrival date at Baltimore.

"Mr. Maloof: Yes.

"A We sailed from Portsmouth on the 9th, we arrived in Baltimore the 11th.

"Q No. 3 port bilge shows water trouble?

"A No.

"Q Would you go back to December 8th?

"A December 8th nothing in the port bilge.

"Q You can't tell if there is any pumping, can you?

"A No, I can't, there is nothing at all.

"Q When does the log go blank, what day?

"A It goes from 12/3, 5 and 6, 7 and 8, 9 and 10, and it started again the 11th.

"Q And are you in Baltimore yet on the 11th?

"A Yes, we are in Baltimore on the 11th.

"Q What did the ship do in Baltimore?

"A We commenced loading for New York Navigation No. 2 and No. 4 holds.

"Q And that is the cargo we are talking about here?

"A Yes."

Page 72, line 25:

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"Dumble

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"Q Did you have any opinion about him from your experience in working with him?

"A Well, I didn't like Haman.

"Q Put that aside, and just pass on his competency as a chief engineer.

"A As far as a chief engineer he was satisfactory. He satisfied Mr. Baumgartner, and they knew more about the engine room than I know.

"Q It is part of his function to make out the log book?

"A Yes.

"Q Did he do it?

"A Not for those days.

"Q Does a competent chief engineer make it out?

"A Yes.

"Q He didn't do it?

"A He didn't do it.

"Q To that extent he is incompetent?

"A To that extent he is incompetent."

Page 74, line 20:

"Q Do you recall why he left the ship?

"A Well, I think he had been gassing up a little bit, and he just got disgusted, and he said he quit.

"Q What do you mean he was gassing up?

"A Drinking a little bit."

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MD-1

!Dumble

Page 75, line 22:

"Q Did you go into the engine room regularly?

"A When I had my inspections I would go down through the engine room."

Page 76, line 13:

"Q You were responsible for the whole ship?

"A Yes.

"Q You are responsible?

"A Responsible for the whole ship, yes."

Line 22:

"Q You have the duty to find the cause of water entry if it is alarming?

"A That is right.

"Q What is your duty towards cargo?

"A To see that the cargo is loaded properly and in satisfactory safe condition and get it there in a safe condition.

"Q Was that done with Iligan's property?

"A Yes, it was.

"Q It was delivered in a safe condition?

"A No.

"Like you are talking about loading in a safe condition, yes.

"Q Your duty is to deliver the cargo in the

MD-2

"Dumble

Philippines in a safe condition?

"A Yes.

"Q That was not done in this case?

"A No.

"Q So to that extent it was an abnormal voyage?

"A Yes.

"Q When you damage cargo over two million dollars you must assume it was abnormal?

"A Yes."

Page 79, line 5:

"Q What do you mean 'blew out'?

"A Filled every bit of space we possibly could in No. 3, in fact we got over.

"Q Fertilizer?

"A We got over 2500 ton in No. 3, we got something like 3000 in there, and we blew out No. 5, so we got all the cargo aboard the ship."

Page 80, line 13:

"Q No, my question to you was when did you first learn, or come to the conclusion that this was an abnormal voyage?

"A You mean for the damage to the cargo?

"Q In any way.

"A When we got to Moji, Japan and I found out that I couldn't take the oil that I anticipated on taking.

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MD-3

"Dumble

"Q That is the first time you learned that this was an abnormal voyage?

"A That is the first time.

"Q On ships of yours is it customary to investigate the cargo holds during the voyage?

"A Yes. You will see in the log book the mate did investigate the cargo holds, in fact two days prior to getting into Moji he investigated the cargo holds and he told me everything was all right."

Line 14:

"Q When the ship arrived in Iligan how high had the water come over the cargo?

"A In No. 2?

"Q Yes.

"A I would say approximately 14 feet in No. 2.

"Q The mate didn't see that?

"A No. . I can give you an opinion why he didn't see it.

"Q I would rather you didn't give opinions.

He didn't see it?

"A There was no water in the hold when John inspected the cargo.

"Q You don't know that for a fact?

"A That is true, I don't."

Line 23:

"Q Now, bilge readings were taken in Baltimore while the ship was loading Iligan's cargo; is that correct?

"A The 13th there are bilge readings, 14th and 15th.

"Q On the 13th?

"A Yes.

"Q What is No. 3 port?

"A On the 13th on the port is zero.

"14th on the port is 12, A.M. and P.M.

"15th is eight and 18.

"The 16th is 18.

"Q On December 16th there is 18 inches of water?

"A Yes.

"Q That is right up to the top of the bilge?

"A Yes."

Page 84, line 3:

"Q That false bulkhead was not watertight?

"A No.

"Q And No. 3 port bilge read 18 inches.

"A 18 inches.

"Q And when was Iligan's cargo finished up in loading?



MD-5

"Dumble

"A The 16th, December 16th.

"Q The same day that the No. 3 port --

"A Had 18 and 18.

"Q Had 18 inches?

"A Yes.

"Q Did you sign the log for that day?

"A That is right.

"Q Did you read it before you signed it?

"A That is right, yes."

Page 85, line 11:

"Q You knew about it?

"A I knew about it.

"Q On the day the cargo loading ended you knew there were 18 inches of water?

"A Yes.

"Q The top of the bilge?

"A Yes.

"Q Any more and the cargo gets wet?

"A The cargo wouldn't have gotten wet in the after end of the No. 3. It is 60 feet, it is a common hold because of the bulkhead, the cutout between 2 and 3. There is about 60 feet distance.

"Q To you it is still not an abnormal voyage?

"A Not with that 18 inches. I presumed this is

MD-6

"Dumble

1  
2 coming from fresh water.

3 "Q You presumed?

4 "A Like I say, didn't I taste it in Panama?

5 "Q Didn't you tell them in Portland that you thought  
6 it was fresh water and didn't they check it out and they  
7 said no?

8 "A That is right.

9 "Q Didn't you tell them about it again in  
10 Baltimore?

11 "A That is right.

12 "Q While you were there?

13 "A Yes.

14 "MR. FISH: Wait a minute.

15 "MR. MALOOF: Just a minute, please.

16 "MR. FISH: This is --

17 MR. MALOOF: This is cross examination, Mr. Fish.

18 "MR. FISH: All right.

19 "Q Who did you see in Baltimore?

20 "A I stand to be corrected. I don't think I talked  
21 to anyone in Baltimore. Our conversation in Baltimore with  
22 my office was crew replacements, and so forth, and the load-  
23 ing of the ship with Mr. Grevers."

24 Page 87, line 19:

25 "Q Now, will you look at 16th and indicate to me



1 MD-6a

"Dumble

2 what pumping was done?

3 "A No pumping on the port on the 16th.

4 "Q Is there a chief engineer aboard this ship?

5 "A Yes, there was, his name was Peter Kalsidis.

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"Dumble

Page 88, line 12:

"Q You knew it was 18 inches?

"A I knew it was 18 inches from the logbook."

Line 19:

"Q Did Mr. Mandle ever discuss this with you?

"A I don't know if Mr. Mandle and I did. I know we discussed it with Mr. Baumgartner."

Page 89, line 7:

"Q You received no word from the company about all this?

"A No reprimand."

Page 90, line 10:

"Q He says reprimanded for not reporting the occurrences on the Weyerhaeuser?

"A What voyage?

"Q It appears to be the voyage where the Iligan cargo was damaged.

"A That is the only --

"Q Because the next question is 'How about the previous voyage?'

"And the answer is, 'Yes,' saying that you were reprimanded for the previous voyage also.

"A No.

"Q Mr. Mandle didn't tell the truth then.



"A I never got reprimanded."

Page 91, line 2:

"Q You weren't reprimanded you are saying?

"A No."

Page 92, line 6:

"Q Did you give the statements of fact in writing?

"A The statements in fact were all typed by me and sent in."

Line 19:

"Mr. Fish: I have in Exhibit 15 of the Mandle deposition statement of facts for Dundalk Marine Terminal, that is Baltimore, Tampa, Cristobal. I have an original signed by Captain Dumble for Mokpu, Korea. I have several, I believe, from Moji. I didn't find one in any of the records that I reviewed, as I recall, for the call at Iligan, and I have the statement of fact and redelivery certificate for termination of voyage San Francisco, and a summary of voyage. That one was signed by the relief captain, Captain Rynbergen."

I will offer these at some time in the trial, your Honor, some of those documents.

Page 94, line 7:

"Q What day did you arrive in Tampa?

"A December 22.

1 "Q And for how many days did you load this fertiliz-  
2 er?  
3

4 "A Sailed the 23rd.

5 "Q- One day?

6 "A One day.

7 "Q How long did it take to discharge? Is that the  
8 ammonium sulphate?

9 "A This is the trisodium phosphate.

10 "It all depends, when you are loading down in  
11 Tampa, they had a good belt, it all depends how many belts you  
12 have to feed the ship when you are loading it there. Then  
13 we were in Hopewell for the ammoniam phosphate there, we had  
14 to wait until they manufactured some of it.

15 "Q Where?

16 "A Hopewall, Virginia.

17 "Q On that voyage?

18 "A Yes.

19 "Q I noticed that it took a month to load" --  
20 I think it should be "unload" -- "unload the  
21 phosphate in Madres?

22 "A Yes.

23 "Q Why?

24 "A Well, first of all, you have to understand  
25 Indians do not want fertilizer due to their roin-



carnation."

Line 24:

"Q Normal cargo?

"A Yes.

"Q Wasn't caked, wet?

"A Later on it all got caked in all hatches.

"Q In Madres?

"A Yes.

"Q While you were there?

"A Yes.

"Q What caused that?

"A The cargo laying so long in the ship and settling down.

"Q Settling down into the water?

"A There was no water in Madres, the holds were completely dry. The cargo laying there so long it just kept caking and caking. It has a tendency to cake up."

Line 22:

"Q Now, at Tampa did you take on bunkers and fresh water?

"A I don't think we did. I don't think we took any bunkers. I think we finished all our bunkering.

"Mr. Fish: Those statements of fact usually have bunkering statements in them. I suggest we hand

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"Dumble

them to the captain to refresh his recollection to save a lot of time.

"Mr. Maloof: Would they help you?

"The Witness: Yes, that is right.

"A You mean in Tampa?

"Q Yes.

"A The 22nd and 23rd?

"Q Yes.

"Mr. Fish: Of December.

"A The logbook shows no taking of any water on bunkers in Tampa.

"Q And you left on the 23rd?

"A Yes.

"Q-- What is the reading for the No. 3 port on December 25?

"Mr. Fish: What was the date?

"Mr. Maloof: December 25.

"A December 25 in Tampa to Cristobal showed 30 in the port, 20 in the starboard A.M., P.M. two in the port, 12 in the starboard.

"Q Was this fertilizer carried in bulk?

"A Yes.

"Q And did you sign a log for that day?

"A I sure did.



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"Dumble

1  
2 "Q Did you read it?

3 "A I presjme I did, yes.

4 "Q You wouldn't sign it without reading it?

5 "A I don't think I would.

6 "Q You knew there were 30 inches of water?

7 "A Yes.

8 "Q So you knew that 12 inches of it were in the  
9 cargo?

10 "A 12 inches would be up into the cargo, yes.

11 "Q In the fertilizer?

12 "A First of all, these bilges are sealed, too, you  
13 know, with burlap. Probably no water could have gotten up  
14 through the burlap.

15 "Q The water didn't get into it?

16 "A I don't know. We couldn't get into No. 3 hatch  
17 because we completely blew No. 3 hatch out to get all that  
18 cargo in the ship. The only hatches we could get into was  
19 2, 4 and 5. No. 3 was completely blown out.

20 "The only way the mate could get into the No. 3  
21 was to open the escape hatch from the main deck and look down  
22 into it.

23 "Q You could get into 2?

24 "A Yes.

25 "Q So what did you do at this time?

"A Pumped them out.

"Q Then what is the reading for December 27th?

"A 35 and 14, two and 12.

"Q It came back again in the No. 3 port bilge?

"A Yes.

"Q You are taking on fresh water?

"A No, we are out at sea.

"Q That is out of the question?

"A Yes.

"Q That is not the cause of this entry?

"A I presume not, no.

"Q Any sweat problem, it wasn't wet fertilizer?

"A We wouldn't have any sweat with the fertilizer.

"Q Now, it went up to 35 inches. Did you investigate it?

"A Like I said, we couldn't get down into the hold. I was wondering where it was coming from.

"Q Is this normal?

"A This wouldn't be normal, this would be an abnormal reading.

"Q That is an abnormal voyage?

"A Yes.

"Q You knew on December 25th that it was an abnormal voyage?



"A Yes. The readings in the bilges, yes.

"Q What is the reading for December 29th?

"A December 29th two in A.M. and 38 in the P.M.

"Q 38?

"A Yes.

"Q 20 inches over the bilges now?

"A Yes.

"Q Then you arrived at Balboa on December 29th; is that right?

"A Yes.

"Q Is that same as Cristobal?

"A We arrived at Cristobal, Balboa is on the other side.

"Q They use the terms interchangeably?

"A No.

"Q It was Cristobal that you entered?

"A Yes.

"Q Why did you go to Cristobal?

"A Take on bunkers and water."

Line 12:

"Q Were you in touch with your people?

"A Yes, I was in touch with them by telephone.

"Q Whom?

"A Steve Mandle.

1  
2 "Q In San Francisco?

3 "A Yes.

4 "Q What did you tell him?

5 "A We talked mostly about the engine repairs.

6 "I can't recall if he even came up.

7 "Q You told me very earlier in this deposition it  
8 was your duty to advise the owner of abnormal situations,  
9 and I assume you did that?

10 "A Yes.

11 "Q Would you have told Mr. Mandle of this abnormal  
12 water entry?

13 "A I presume I would have, yes.

14 "Q On the phone call from Cristobal?

15 "A Cristobal to San Franchisco.

16 "Q Do you remember what he said?

17 "A To tell you the truth, I can't remember.

18 There was about five or six phone calls in there, while the  
19 time we were in Cristobal.

20 "Q Would you have told him how high it was?

21 "A I don't know if I told him how high it was, but  
22 I have an idea I told him that there was water getting in  
23 that port bilge.

24 "Q The same old recurring trouble?

25 "A Yes.



"Q And on January 7th, to save a little time, I am reading from a survey report of your American Institute of Marine Underwriters, Hyopsung Shipping Corporation, I assume they are your surveyors?

"A That would be the ABS man.

"Q I assume, you can stop me if I am wrong, he made notes from the log. We will save a little time if I can take the bilge readings out of this.

"On January 7th while you are still at Cristobal the readings in the No.3 port bilge are 30 inches?

"A Yes.

"Q Then you sailed from Cristobal January 14, on which day the reading in the No. 3 port bilge is 20 inches, still over the bilge?

"A Yes.

"Q And presumably into the cargo; is that correct?

"A Well, we arrived the 29th in Cristobal, and that P.M. reading was in the afternoon, and we were alongside the dock at 1406. We hooked up with the fresh water, and this was the 38, this is the day I am telling you about, that the carpenter came up and reported to me, and then I told him to take another sounding.

"About 10 P.M. that night I went down and tasted that water, the 29th at Cristobal. That is the day we arrived there, and that is the day we started to take

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fresh water and bunkers.

"Q But there is 35 inches December 27th?

"A December 27th. But it still came up that night.  
It got as high as six feet into that bilge sounding.

"Q Six feet?

"A Yes.

"Q In Iristobal?

"A While taking fresh water. It got as high as  
six feet.

"Q Now, you knew you had a cargo of fertilizer  
aboard?

"A That is right.

"Q And you knew that this bulkhead put in by your  
employer between 2 and 3 --

"A It was not put in by my employer, it was put in  
by the charterer, New York Navigation.

"Q You knew it wasn't watertight?

"A Yes.

"Q I presume you knew if it got wet the fertilizer  
would go into the old No. 2?

"A Would I? I didn't know whether it would go in  
there or not.

"Q Then you didn't know the nature of the fertiliz-  
er?



"A I knew the nature of it, it is a round small pellet form.

"Q It gets soaked with water --

"A How much can it absorb, I don't know.

"Q Is it possible to move?

"A I presume it moved because it did move.

"Q You carried other fertilizers, sir, there couldn't be too much difference between fertilizers as far as water goes?

"A I am not a fertilizer expert.

"Q It didn't occur to you that the Iligan cargo might be in some danger?

"A No, it didn't."

Line 20:

"Q Tampa is a dry sodium phosphate?

"A Yes. If you take it all out of Florida you are not going to have any left. Salt water doesn't hurt the fertilizer.

"Q Does it hurt machinery?

"A Sure, it will hurt machinery.

"Q 2 and 3 were common holds?

"A Yes.

"Q Now, when I mentioned 18 inches to you before, you laughed?

"A That is right.

"Q Remember that?

"A Yes.

"Q Were you still laughing at 38 inches?

"A No. That is when the carpenter reported to me, that we had it up there.

"Q In other words, you were concerned?

"A Very much concerned.

"Q What did you do about it?

"A I went down and talked to the chief engineer. I asked him where could this water possibly be coming from. Everytime we take fresh water that port bilge fills up. He kept telling me he couldn't figure out where, there was no reason for it, but it was fresh water.

"When I tasted that water if that water had been salt water I would have had a great cause for alarm, but it was fresh water.

"Q What was it when it arrived in Iligan City, fresh or salt?

"A Salt water, I presume. It had to be salt water.

"Q So your testimony is that it changed from fresh to salt water during the voyage?

"A My testimony isn't that. You are getting two things confused.



mkpl4

"Dumble

"Q Straighten me out.

"A The reason that salt water is in the hold is the fact that you had a leak in the sanitary srom valve, the valve itself. It is in the port and of No. 3 hatch, after corner 18 feet above the deck. This is the sole reason why that salt water got in No. 3 cargo hold, the leak in that pipe. It didn't come from the bilge, it came from that pipe.

"Q Did you see that clapper valve when it was taken out of the ship?

"A I looked at the clapper valve in Iligan City, but I didn't look at the clapper valve in Alameda.

"Q What did it look like to you?

"A When I looked at it in Iligan City?

"Q Yes.

"A The clapper valve was turned at an angle in a horizontal fashion, it didn't close properly.

"Q What about the pipe?

"A In Iligan City?

"Q Whenever you saw it.

"A I saw it in Moji because it was all cemented over. When I looked at it in Moji, we crawled over there, the ABS inspector and I, we found this hole in it, it was an inch and a quarter long by a quarter inch.

"Q An inch and a quarter by a quarter inch in Moji?

"A Yes."

Line 20:

"Q Now, when you saw it you say it was one and a quarter by one-quarter?

"A Yes.

"Q Did you measure it?

"A The ABS man and I did measure it.

"Q The ABS man?

"A Yes."

Line 13:

"Q I see an ABS survey from Mokpu, where the ABS says that the bottom of the valve had a hole two inches long.

"A Like I say when I was down there with the ABS man in Moji, Japan, that was the size of the hole, an inch and a quarter by a quarter inch.

"Q When you arrived at Moji did you make a master's protest?

"A I did.

"Mr. Fish: That is also in Exhibit 17, it is annexed to one of the reports.

"Q What did you say the cause of the damage was in your master's protest?



"A The cause of the damage in Iligan City, the leak in the sanitary storm valve.

"Q What did you say in Moji?

"A Leak in Sanitary storm valve.

"Q You didn't say heavy weather?

"A We only had one day of heavy weather going over there, and it only lasted for ten hours.

"Q It wasn't heavy weather?

"A No, just force 7.

"Q I don't know what the ABS means here when he says 'Report upon leakage into the No. 2 and 3 lower cargo hold compartment stated to be a consequence of heavy weather.'

"Mr. Fish: Here is the copy of the noted protest.

"Mr. Maloof: Has this been marked already?

"Mr. Fish: This is part of Exhibit 17.

"Q Is that your protest?

"Mr. Fish: The protest is unsigned.

"A Yes, the 16th day of February, 1967, one day.

"Q When you arrived at Moji you declared that the cause of damage was boisterous weather?

"A When I arrived at Moji -- I made a note of protest because we had force 7 winds. There might have been more damage, I didn't know.

mkp17

"Dumble

2 "Q You signed this paper, didn't you?

3 "A Yes. I could have extended it too.

4 "Q You said boisterous weather?

5 "A Yes."

6 Page 112, line 21:

7 "Q Now, Captain, according to this document we  
8 have agreed it is probably accurate on the bilge readings,  
9 on January 20th while you are at sea on the way to Moji, No. 3  
10 port bilge is 38 inches, which you knew because you signed  
11 the logbook?

12 "A Yes.

13 "What day was that?

14 "Q January 20th.

15 "A January 20th, yes.

16 "Q January 24th it is 30 inches?

17 "A Yes.

18 "Q February 4th it is 40 inches?

19 "A Yes.

20 "Q Now, at that state did you have any second thoughts  
21 about your theory of the fresh water entry from taking fresh  
22 water aboard?

23 "A No, because probably that sanitary storm valve  
24 opened up again and started to run down into the bilge,  
25 started working through the cargo.



"Q Captain, would you say that a ship with water in the cargo compartments, in the cargo holds, is a seaworthy vessel?

"A When you are at sea, and the ship is still floating, and you can't get into that cargo hold and inspect it, and the mate was down in No. 2 when these bilge readings came and he told me, you will see in here where John has made his entries in the logbook, inspected the hold and found same clear.

"Q I asked you a simple question.

"A When I am out at sea --

"Q I didn't say at sea.

"A You are referring to the 38 inches?

"Q No, I wasn't saying that.

"A Yes.

"Q With water in the cargo hold when you sail?

"A Ten inches in your bilges.

"Q Let us go back to the bible here.

"I am not talking about sweat, but free water that you could swim in.

"A Yes.

"Q Let us say 30 inches, 12 inches over the bilges, is that a seaworthy vessel?

"A Well, it all depends where the water is coming

from. Like I am telling you it is always hearsay with you. I don't know what is going on. I went to the engineer and asked where this water would be getting in there. It might have been a manifold backing up or something, I don't know.

"Q Suppose you don't know where it is coming from, is the ship a seaworthy vessel?

"A Suppose I don't know where it is coming from?

"Q Yes.

"A I would say, in your interpretation of seaworthiness, the vessel would be unseaworthy.

"Q And you didn't know where the water was coming from?

"A I didn't know.

"Q And then you left Cristobal for Japan?

"A Yes, for Japan.

"Q And Mr. Mandle didn't give you any instructions, did he?

"A No instructions at all.

"Q On the telephone calls?

"A On the telephone calls that I remember.

"Q Were you in communication with the charterer or his representatives while you were in Cristobal?

"A Was it Best & Company?



"Yes, they had their representative down there in Cristobal.

"Q Was he there already, or did he come down when the ship came?

"A I think he was aboard once at Cristobal, and I talked to him a couple of times uptown. He knocked us off hire from the charter party."

Page 116, line 13:

"Q Did you ever give the opinion that the source of the water was a back-up in the bilge system?

"A Did I ever give that opinion?

"Q Yes.

"A Not that I can recall.

"Q I think Mr. Mandle testified that you did.

"A I don't know what Mr. Mandle testified to.

"Q Would the operations manager be in the nature of a superior of yours in the company?

"A Yes.

"Mr. Maloof: Mr. Fish, I think on a previous deposition, the deposition of Mr. Mandle, you agreed to furnish a logbook for voyage No. 23. What is that about, do you recall, what voyage would that be?

"Mr. Fish: These, I think, were voyages 22 and 23.

2 "Mr. Malcoof: We are covering it, and we have  
3 the logbook now?

4 "Mr. Fish: Originally had asked for the  
5 logbooks for the two previous voyages, and I don't have  
6 the logbooks beyond these three voyages. The two foreign  
7 and one intercoastal is all I have.

8 "Mr. Malcoof: One of these is voyage 23?

9 "Mr. Fish: I think so."

10 Page 118, line 5:

11 "Q Were there any pumping problems in India?

12 "A Pumping problems?

13 "Q Yes.

14 "A Not that I can recall.

15 "Q No trouble with the pumps?

16 "A The only thing we had in India was a little  
17 generator trouble.

18 "Q Captain, I think you were ordered in writing not  
19 to have made any foreign repairs?

20 "A That is right.

21 "Q Unless it was absolutely necessary for the safety  
22 of the vessel?

23 "A Yes.

24 "Q How did you interpret those instructions?

25 "A The reason we don't have these foreign repairs



mkp22

"Dumble

is because of the Customs duty and so forth. Weyerhaeuser just doesn't do things like that, unless it is absolutely necessary for the safety of the ship.

"Q So that you wouldn't have had any foreign repairs as long as the ship is navigating?

"A No."

Line 12:

"Q Page 41, 42 and 43 of Mr. Mandle's deposition he says that if the captain, meaning you, had knowledge of the high bilge readings he says he would have investigated, meaning you.

"Do you agree with that?

"A That I would have investigated the high bilge readings? Yes.

"Q On page 43 Mr. Mandle said, speaking about the master, 'He should consider that he has a considerable entry.'

"A Yes.

"Q Do you agree with that?

"A Yes.

"Q On page 44 Mr. Mandle was asked this question, and he gave this answer:

"Q Certainly you would agree on that leg of the voyage --' I am not sure what voyage he is referring to --

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"Mr. Fish: Tampa to Cristobal, because it says at the top of page 44, 'After leaving Tampa.'

"Q (Continuing) '-- that on that leg of the voyage the master, if he was paying any attention at all to the logbook, would realize that he has a problem in No. 3.'

"The answer was, 'Yes.'

"A Right.

"Q You have no quarrel with that opinion of Mr. Mandle's?

"A No.

"Q So did you realize that you had a problem in No. 3?

"A Yes. I knew we had a problem. But like I say everytime before we took this fresh water this bilge would fill up. That is where I figured it was coming from all the time. When we got down to Cristobal I made it a point to test it and it was fresh water. That was all I was interested in, when I found it was fresh water then I knew it was coming from the engine room. Everytime I went to the engineer and asked what is wrong he said that nothing was wrong.

"Q On page 47 Mr. Mandle said, speaking about the ship, they felt it was leaking back through the bilge system?

"A Maybe he discussed it with the chief engineer.



1  
2 "Q The previous answer is apparently in the opinion  
3 of the master they had found the source and did not consider  
4 it to be a serious problem.

5 "What was the source? They felt it was leaking  
6 back to the bilge system?

7 "A I can't remember having any discussion with Mr.  
8 Mandle about leaking back through the bilge system.

9 "Q That doesn't accord with anything that you have  
10 said here today.

11 "A No.

12 "Q On page 47 the question was:

13 "'Should the entry of water on the voyage  
14 from Tampa to Cristobal be reported to the operations  
15 department?'

16 "The answer was, 'At this stage it is obvious.

17 "So that explains your phone call to San  
18 Francisco, right?

19 "A Like I say there were so many phone calls to  
20 there, from Cristobal to San Francisco, I can't recall every  
21 thing that was said on those phone calls. It was at least  
22 a good eight that we had, long distance calls?

23 Line 17:

24 "Q / This clapper valve, Captain, when the ship is in  
25 ballast, unloaded, it is above water?

"A It is quite away above water. A good 15 feet, 20 feet.

"Q And when the ship is loaded it is underwater?

"A At summer marks it would be about two feet underwater.

"Q What are summer marks?

"A It would be 27 feet 8-3/4 inches, and the light load line would be 12-10, I think it was.

"Q I don't know if you have done it, but in studying the history of the entry of water into No. 3 port bilge had you noticed a relationship between the times when the ship is loaded and the times the ship is empty?

"A I noticed that.

"Q The water was entering when the ship was loaded?

"A Yes."

Page 124, line 5:

"Q Are there any entries in the logbook, Captain, at Cristobal, concerning the entry of water?

"A I think it is at 38 inches there.

"Q Aside from the bilge readings?

"A No, there is no entry.

"Q No comment?

"A No comment.

"I have to read the whole logbook here.

"Q Just while you were at Cristobal.

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"Mr. Fish: I found no such entries.

"A No such entries while we were at Cristobal.

"Q Shouldn't there be an entry of unusual situations in the logbook?

"A If there was an unusual situation, but like I say the fact that I conceded it fresh water, and that was the reason it didn't bother me much, because after I tested it and it was fresh water I presumed it was coming from some place in the engine room.

"If I hadn't tested this water, I would say I would. I made a special point to go down and taste this water. I told the engineer to check it, he came up and reported to me in my room that there was something wrong, that the bilge was filling up. When I went down there to test it with him, found it was fresh water, then I knew it wasn't salt water, it didn't come from the sea.

"I said to the chief, 'How come everytime we take fresh water this port bilge fills up like this, fills right up?'

"Q What did he say?

"A He didn't know where it was coming from, what caused it.

"Like you say, we just went through the survey in Portland, Oregon, that was looked at by the Coast

Guard, and they certified it was seaworthy, no leaks in it or anything like that. I heard Commander Rynbergen state this in front of Mr. Rohnberg, our marine superintendent, it gave me no cause to worry about that storm valve.

"What they usually do is they have a carbon-tip hammer, and they go down and pound all of this.

"Q This is what is usually done, you don't know if it was done?

"A He carried it in his pocket.

"Q You don't know if it was done?

"A I don't know if it was done because I was not in the cargo hold with him.

"Q Because as it turns out it was wasted away, Captain?

"A Was it wasted away?

"Q You saw it?

"A That is right, I did see it, but I don't know actually what caused that.

"Q You disagree with Mr. Mandle again, he said it was wasted away?

"A He inspected it when it was taken out and put on the deck in Alameda.

"Q That makes a difference?

"A It makes a difference. The only time I inspected



it was at Moji. To me it looked like a piece had come right out.

"Q Mr. Mandle's opinion was that it took a long time to arrive at this condition?

"A It did?

"Q Do you agree or disagree with that?

"A Took a long time to arrive at this condition?

"Q The rusty wasted condition, it ended up with a four-inch hole in it from rust?

"A It didn't have a four-inch hole when I looked at it in Moji. It did not have a four-inch hole. It was an inch and a quarter by one-quarter inch when I looked at it.

"Q Mr. Mandle, I take it, is a reliable man?

"A I know Steve very well.

"Q Page 78 he says:

"'I would say approximately a half inch by four inches.'

"A This is a couple of months later."

Line 22:

"Q On page 78 Mr. Mandle says:

"'The consensus of opinion was it was wasted.'

"Apparently he wasn't alone, it was the consensus of opinion.

"A If they said it wasted away, it wasted away.

2 "Q What is your opinion, you disagree?

3 "A I can't tell because I didn't get up there and  
4 chip it. When I went down and<sup>i</sup> looked at it at Moji it  
5 didn't appear to be wasted to me.

6 "Q You disagree with the consensus of opinion?

7 "A They had it out on deck.

8 "Q Did they have a better opportunity than you?

9 "A Yes, they had it all apart and on deck.

10 "Q On page 82 Mr. Mandle, your operating manager,  
11 was asked this question, and he gave this answer:

12 "Are you aware of any other Liberty ships  
13 operated by Weyerhaeuser where clapper valves were  
14 found in similar condition as on the John Weyer-  
15 haeuser?"

16 "His answer was:

17 "'We have had clapper valves deteriorate.'

18 "A He probably did have them deteriorate.

19 "Q You said you never had it happen to you before?

20 "A That is right.

21 "Don't forget there were six ships. They went  
22 through all those ships when they went on drydock where I  
23 didn't."

24 Line 13:

25 "Q Are clapper valves checked during the drydocking



period?

"A Usually clapper valves are checked, the whole bottom is looked at.

"Q Mr. Mandle says, 'Not normally, no.'

"A Mr. Mandle says it, Baumgartner wrote the checks.

"Q Who knows better, you or Mr. Mandle?

"A Mr. Mandle, he is in charge of repairs, he should know more than I do.

"Q He says they are not normally checked during the drydocking period.

"A Take Mr. Mandle's opinion then.

"Q On page 91 Mr. Mandle was asked this question and he gave this answer:

"Mr. Mandle, the wasting of the clapper valve that you noticed, did that occur on the voyage from Tampa to Moji, Japan, or had it accumulated much earlier than that?"

His answer was:

"I would say it occurred over a longer period than that time span, yes."

"A Mr. Mandle said that?

"Q Yes.

"A He is a metallurgist, he can say how long it takes. Since he said it, let it stand at that."

Page 133, line 7:

"Q I think you testified earlier that Moji was the first indication of the real entry of water?

"A Yes.

"Q That can't be right.

"A Like I say, the mate was in the cargo hold.

"Q I am talking about the 40 inches in the log-book.

"A He couldn't get into No. 3.

"Q Doesn't it indicate a real entry of water into the cargo holds if it is 40 inches high?

"A Yes.

"Q Moji isn't the first indication then, is it?

"A As far as the bilges are concerned MOJI wouldn't be.

"Q How else would you know?

"A We saw no water in No. 2, No. 2 was completely dry.

"Q You didn't see it?

"A No, that is right, I had taken the mate's word. The mate checked the holds, told me, 'No. 2 is completely dry, I can't get into No. 3.,' that is it.

"Q You remember those exact words?

"A Let us take a look and see what he makes the



logbook entry on it.

"Q Go ahead.

"A 'One P.M. checked cargo holds, all in good condition, J.T.'

"That was the 20th of January.

"Q Wait a minute now. The 20th of January?

"A Yes.

"Q That includes the time that the fertilizer was floating in water?

"A It has 38 inches right here, that is right.

"Q And the fertilizer is soaking wet?

"A We can't get into No. 3.

"Q Why did he say good condition?

"A He couldn't get in. He went back to the after end of the No. 2 hatch and inspected the bulkhead and it showed no evidence of water getting in."

Mr. Maloof raised an objection as to what the first mate did at that time.

Now on page 135, line 8:

"Q Captain, this clapper valve and the pipe inside of the cargo space in No. 3 hold on the port side is 18 feet above the deck?

"A Approximately 18 feet, yes.

"Q Have you yourself gone up to check that valve?

2 "A No.

3 "Q So any inspection you made on that pipe was from  
4 the deck of the hold, 18 feet below, or 22 feet below?

5 "A Yes.

6 "Q Have you seen anyone while you were master before  
7 this occurred, this voyage, where you had 13 feet of water  
8 in the hatch, have you seen anyone up at that valve?

9 "A No, I have not.

10 "Q Up at that pipe?

11 "A No.

12 "Q On the other side of the ship, that is the out-  
13 side portion of the ship, is the clapper valve accessible?

14 "A Yes.

15 "Q Have you yourself ever examined that clapper  
16 valve?

17 "A No.

18 "Q Have you seen anyone at any time prior to this  
19 entry of 13 feet of water into the hatch at Moji, Japan,  
20 seen anyone?

21 "A No.

22 "Q Have you ordered anyone to check that clapper  
23 valve?

24 "A No, I have not.

25 "Q Prior to this occurrence?



"A No, I have not.

"Q When the Coast Guard man was in the hatch, I assume you were not with him?

"A I was not with him, no.

"Q And who accompanied the Coast Guard man on his inspections?

"A Usually the chief mate does. Whether John had been with him at that time I couldn't tell you. I didn't see John.

"Q How would someone who was going to check that pipe get to it?

"A We would have to put a ladder down.

"Q You would have to specifically send a ladder down to the lower hold?

"A Yes.

"Q At least an 18-foot ladder?

"A Yes.

"Q On which you would go up and inspect it?

"A Yes.

"Q On the outside of the vessel, depending on the deck, the tide, the state of tide, the clapper valve is readily accessible or not readily accessible; is that a fact?

"A Depending on what your draft is. If she is

lighter than 25 feet you could probably see her. Getting down and looking in. She is recessed in about six inches.

"Q Who on the vessel would have the responsibility for checking that clapper valve, if anyone?

"A If anyone to check the clapper valve?

"Q Yes.

"A The chief engineer, since he is in charge of repairs.

"Q It would be his duty to check that?

"A Like you say it would be mine, too.

"Q With regard to the notation that you found 13 feet of water in the hatch at Moji, can you explain why if this hole through which the water entered is an inch and a quarter long and a quarter-inch wide, how this 13 feet of water could have entered into the hold in the two-day period when you say that the mate and the soundings all indicated no water in the hold?

"A The soundings indicated water like in No. 3. But when we loaded --

"Q When you say the soundings indicated water in No. 3, how much water?

"A 38 inches.

"Q Now, that is a big difference between that and 13 feet?



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"Dumble

"A 12 or 1300 ton.

"Q You say eventually you had arrived at 13 feet of water then?

"A What I was referring to was I expected the load of approximately 1200 ton of bunkers at Moji to carry me through. That would put me down to my summer marks again. When I got there I was already on my summer marks. I presumed it was approximately 1200 ton of water in that hold.

"Q But my question, perhaps you misunderstood it, or perhaps I didn't state it correctly, is do you know how much water was in the No. 3 hold when your chief officer made his inspection two days before arrival at Japan?

"A I don't know how much water was in No. 3 hold.

"You mean as far as by him is concerned?

"Q Or by way of bilge soundings?

"A All I could tell was that there was 38 inches in the bilge.

"Q You are not saying, are you, that that is all the water that was in the hatch at that point?

"A I am not saying that that is all the water that was in there.

"Q Could you tell us why 13 feet, or something less than 13 feet, 10 feet?

1           mkp37  
2           "A     Can I go back to Tampa, to say how the cargo  
3 loaded?

4           "Q     You can explain it.

5           "A     When we were back at Tampa, in order to get  
6 all the cargo into No. 3 hatch, we didn't put the pontoons  
7 on the tween deck. They are not a structural safety  
8 factor on the ship. We put them aside, we completely  
9 loaded that No. 3 lower hold out. We had a bulldozer  
10 down there shoving it to the sides to bring it all the way  
11 up to the wings. Over in the wings we had six inches that  
12 the bulldozer couldn't get it up to.

13                 "Then we completely blew the tween deck there,  
14 pulled it right into the lower hold, completely lowered  
15 it on the tween deck and blew that tween deck out as far  
16 as we could, it was even up to the escape hatch. That is  
17 how we had this fertilizer.

18                 "Now, with the sanitary storm valve leading in  
19 there, and this fertilizer absorbing this water down there,  
20 which it did, because when we went down there we found  
21 pockets of water through the fertilizer, all I can say is  
22 that this fertilizer began absorbing so much water and it  
23 became like muck. All this weight came down and just drove  
24 it right through this false bulkhead right up into all that  
25 cargo and it just flooded the hold.



"The cargo in No. 3 had settled, I would say, a good six feet.

"Q So then what you are trying to explain is why you didn't know that there was 13 feet of water in the hold prior to arrival at Moji?

"A Yes.

"Like I say, when John was down there, and like you say hearsay, he reported to me that the holds were dry, he inspected the bulkhead and everything and there is nothing coming through, it is nice and dry down there. She must have come through with such a force, because after looking at all those turbines and so forth, that stuff was plowed right in there, and I mean deep.

"Q Coming through an inch and a quarter; as you put it, and a quarter inch, with the amount of water you noticed in the hold, how long a period of time would this have taken?

"A When it was leaking after we put the cement on, the cement patch on, or the cement block on in Moji and proceeded to Mokpu and it was still leaking, and I went down there and inspected it, it was a good heavy stream coming in there. How long it took to get in there I couldn't tell you. I couldn't tell you what the rate of flow was. But it was a good heavy stream coming in there.

"Q We agree that it is probably more than one day leakage to get 13 feet of water.

"A It could have been more than one day. Don't forget that is 24 hours.

"Q Did you compute the tonnage of the water that entered that hatch?

"A No. The only thing I went by was the draft.

"Q That is what I mean, by way of the draft.

"A That it was approximately 1200 tons of water.

"Q Coming through this inch and a quarter by a quarter-inch hole?

"A Yes."

Page 144, line 14:

"Q Now, at Baltimore this vessel went on charter to New York Navigation?

"A Yes.

"Q Did they have someone who looked over the vessel?

"A Yes.

"Q Did you talk to that man who looked over the vessel?

"A Yes."

Page 147, line 10:

"Q I am talking about you as a master of a vessel, would you want your clapper valves checked?

"A Yes, I would want the clapper valves checked,

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yes.

"Q And you would want that pipe checked also, wouldn't you, on an annual drydocking?

"A On Liberty ships the sanitary storm valve goes through No. 3, on other ships it doesn't, it goes through all the engine rooms. This is the first time I have ever had a sanitary storm valve leak on me. But I have been told that they have been a constant trouble on Liberty ships, the sanitary storm valves leaking.

"Q As captain of the vessel you would expect that in the annual drydocking that that pipe, that clapper valve would be checked?

"A That is right."

khb

"Dumble"

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"Q What, if any means were made while you were in Korea to have the cargo in No. 4 or No. 2 protected with regard to the stevedores which boarded the vessel?

"A In No. 2 we had watchmen aboard the ship, and I know they got in No. 2 hatch, I know the Longshoremen got in No. 2 hatch from that false bulkhead, because they defecated all over the hatch. I knew they were in there. We had watchmen all over the ship, we had employed watchmen. We had them down in No. 3. I don't think John put anyone in No. 2. They had the escape doors locked. They could get into No. 3 lower hold through that false bulkhead."

Line 22:

"Q Was any of the mates checking any of that?

"A They were around the deck. How many times they were in the cargo holds, this I couldn't tell you."

Page 150, line 11.

"Q Has it ever been mentioned to you that there was any pilferage?

"A We had some trucks in No. 4, and I think there was a spotlight taken off one, and there were some tools taken out of these trucks, if I can remember correctly. I think that was about it. Other than that, I can't remember of anything being taken.



khb

"Dumble"

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"Q Would it be the mate's job to check to see that the stevedores were not in No. 4 hatch when they were supposed to be discharging the cargo in No. 5?

"A He is supposed to be down there and take a look. They usually know where the mate is, if they are going to do anything. You walk down the hatch they are all good boys, as soon as you leave someone tells them you are not around and they go piling into what they want, especially if they can get into it."

Line 12:

"Q Could you also have called out additional men in order to make sure that the watchmen were not in cahoots with the stevedores?

"A I could have turned sailure to do this."

Page 152, line 11:

"Q Do you know how the bilges, the bilge wells were prepared before the loading of the fertilizer?

"A Burlaps, and I think we used on the outside cement on the outside of them. Burlapped the top of it and cemented the sides.

"Q Cemented the burlap down?

"A Yes.

"Q When you examined the pipeat Moji I assume you were standing on top of the fertilizer?

1 khb 3

"Dumble"

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2 "A Right on top of it, yes.

3 "Q And did you use any tools in which to inspect:  
4 it?5 A No, we had a flashlight down there, the ABS  
6 man he had a tool. He was the one who measured it, and he  
7 called off the measurements to me and that is how I know  
8 an inch and a quarter by a quarter-inch. I can still  
9 remember."

10 Page 161, line 11:

11 "Captain, at Baltimore prior to leaving on this  
12 disastrous voyage did anyone from New York Navigation inspect  
13 the ship?

14 "A Yes, they did.

15 "Q Who was it? Who did it, do you know?

16 "A I think Augie Grivers inspected it, and I  
17 think they had their surveyor, too.

18 "Q Did they go down into the holds?

19 "A Yes.

20 "Q Did they ask you for a ladder?

21 "A Not that I recall. They wouldn't come to  
22 me for it anyhow, they would go to the mate.

23 "Q Who was with Mr. Grivers?

24 "A I imagine the chief mate. That is his job."

25 Page 163, line 11:



khb 4

"Dumble"

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"Q Captain, Mr. Fish showed you a load line inspection report dated October 15, 1965, and asked you for your interpretation of it.

"You weren't on the Weyerhaeuser at that time?

"A The John Weyerhaeuser, no; I was not on that vessel at that time.

"Q You don't know who made that inspection?

"A No, I don't. I could tell you the surveying party was American Bureau of Shipping. The individual who made the survey I don't know.

"Q You don't know what kind of inspection he made?

"A That is true.

"Q When you see the word 'satisfactory' here next to the scupper and sanitary discharge, what did you testify that meant to you?

"A That everything was in good order.

"Q That it had been inspected?

"A And in satisfactory condition.

"Q And if satisfactory were not there, if it were blank, what would that mean to you?

"A That they haven't inspected them.

"Q Or possibly that it wasn't in good condition, perhaps?

"A If it wasn't in good condition he would have

2 put a recommendation over in the last column there what  
3 to be done.

4 "Q That would be the ideal?

5 "A Yes.

6 "Q Perhaps possibly he could just leave it  
7 blank?

8 "A It could be.

9 "Q I show you a report of annual load line  
10 inspection of the American Bureau of Shipping of October 21,  
11 1966. Is there any reference in No. 8 next to scuppers and  
12 sanitary discharge there?

13 "A No.

14 "Q Next to the annual load line inspection  
15 certificate of October 21, 1966, is a report which apparently  
16 is a report of the annual survey made in Portland, Oregon  
17 dated October 21, 1966. Would you look at that and let  
18 us know whether there is any indication that the November  
19 3 port bilge clapper valve was inspected, or the storm valve?

20 "A No, there is none for the hull.

21 "Q So can we conclude then that the clapper  
22 valve was not inspected at this annual inspection by the  
23 American Bureau of Shipping?

24 "A Yes.

25 "Q Of course we have no other report of any  
kind?



khb 6

"Dumble"

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"A That is right.

"Q Captain, you receive copies" -- I will withdraw that.

Page 167, line 7:

"Q Would it be fair to say that the chief engineer, Mr. Haman, who was previously familiar with the problem of water in No. 3, had not told the new chief engineer of the problems with regard to the water problem of No. 3 hold?

"A No, he never told him."

Line 15.

"Neither did you, Captain?

"A With Pete?

"Q You didn't tell the chief engineer?

"A I told Pete when we took fresh water that No. 3 bilge did fill up. I told Pete about this. I told him we have a lot of trouble. I knew Pete before because he sailed with me."

I have no further readings from Captain Dumble's deposition.

THE COURT: Do the defendants want to read any part of this?

MR. WARNER: I would like to offer the remainder of the deposition. There are just a couple of paper clips --

1 khb 7

2 it won't take very long in the morning to read it.

3 THE COURT: Are you offering the entire balance  
4 of the deposition?

5 MR. WARNER: Yes.

6 THE COURT: Any objection to it?

7 MR. MALOOF: There are certain parts that I would  
8 have objection to, especially the Captain talking about a  
9 conversation in Portland between Mr. Baumgartner and the  
10 Coast Guard man, and he says that the Coast Guard man told  
11 him something about the valve being in good condition,  
12 but he said the Captain himself called it hearsay twice. I  
13 will object to that going in. Otherwise, I don't know what  
14 else in the deposition would be objectionable -- that is the  
15 one thing that is a little unfair, but that is all I can  
16 think of in the deposition that I would object to.

17 THE COURT: Can you tell me where that is?

18 MR. MALOOF: Perhaps, if your Honor please, if  
19 I could look at it this evening I could tell you in the  
20 morning.

21 THE COURT: All right.

22 MR. WARNER: I think part of it has already been  
23 read by Mr. Maloof.

24 THE COURT: Well, you look it over tonight and  
25 see if there is any objection to any of the rest of it. If



khh 8

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it is only a little bit I will read it and rule on it, and  
sit here and listen to it.

We will adjourn now until 10 o'clock tomorrow  
moring.

(Whereupon, the hearing was adjourned to July 18,  
1972, at 10 a.m.)

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UNITED STATES COURT HOUSE

FOLLY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4500

2 ILIGAN INTEGRATED STEEL MILLS,  
3 INC.,

4 vs.

5 SS JOHN WEYERHAEUSER, her engines,  
6 etc., WYERHAEUSER COMPANY and  
NEW YORK NAVIGATION COMPANY, INC.

7 New York, July 13, 1972,

8 10:00 a.m.

9 Trial resumed.

10 - -

11 THE COURT: Do the defendants have any  
12 part of the deposition of Captain Dumble to offer?

13 MR. WARNER: Your Honor, Weyerhaeuser has  
14 offered the remainder, the residue, of the deposition  
15 and will not read any part of it.

16 THE COURT: It might be a good idea for  
17 you to designate by page and line the portions that you  
18 are offering and the reporter can copy those into the  
19 record, since we have had everything offered by the  
20 plaintiff in the record.

21 MR. MALOOF: May I make a suggestion? I  
22 don't have any objection to the rest of Captain Dumble's  
23 deposition going in, except certain pages I can easily  
24 designate for you.

25 There are three items of obvious hearsay, and



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I raised the objections on the deposition but they are reserved for the trial. That might be quicker.

THE COURT: Will you tell me the portions you object to, by page and line.

MR. MALOOF: Yes, sir. Page 9, on the bottom, line 25. I may have put something in inadvertently, and if I have, I move to strike it now, because I see I have a red line on that. I don't know if I read it yesterday or not, but as of now I am objecting on the basis of hearsay. Page 9, line 25, down to page 10, line 25.

THE COURT: Any others?

MR. MALOOF: Yes, sir.

Page 16, line 2, to line 18, is objected to on the basis of hearsay.

Page 18, lines 10 to 21.

On page 125, line -- if it please the Court, Mr. Kennedy reminds me I did put something in inadvertently and I now move to strike it on the basis it is hearsay.

THE COURT: First finish up what you are doing now.

MR. MALOOF: Page 125, lines 12 to 24.

On page 132, line 1 to line 21.

On page 134, line 2 to line 25. I inad-

mda

vertently read some of that yesterday, your Honor.  
move to strike it today.

On page 154, line 18, to page 155, line 24 ---  
to page 156, line 2.

THE COURT: What are you moving to strike?

MR. MALOOF: There were two parts I read  
yesterday.

THE COURT: Give me the page and the line.

MR. MALOOF: Page 134, lines 1 to 24.

Going backwards, page 132, lines 1 to 25.

And 133, lines 1 to 4.

THE COURT: What was that last?

MR. MALOOF: Page 133, lines 1 to 4.

I move to strike on page 125, lines 12 to 24;  
and on pages 9 and 10, line 25, page 9, to line 4, page  
10.

That's it, your Honor.

THE COURT: Yesterday, as you read this rather  
rapidly, I tried to keep up with you and make notes as  
to the parts you were reading, and my notes do not reflect  
that you read some of the things that you are now moving  
to strike.

I am not going to take the time now to go  
back through all the testimony to see whether you read it



mda

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1 or not. We will take them up one at a time on the  
2 assumption that you really did read it, although I  
3 doubt if you did in some of these matters.  
4

5 MR. MALOOF: Thank you, sir. I am not  
6 sure if I did or not.

7 With that, I have no objection to all of Captain  
8 Dumble's deposition going in.

9 THE COURT: All right, now, taking these in  
10 order on the motion to strike, the first one in numerical  
11 order is page 9, line 25, to page 10, line 4. The motion  
12 is denied.

13 The next is page 125, line 12 to line 24.  
14 Well, I will grant the motion to strike that, assuming  
15 that you did read it. In this passage the captain is  
16 purporting to say what some survey, in Portland, Oregon,  
17 by the Coast Guard certified, and I don't suppose it is  
18 competent evidence of what they certified. I will  
19 grant that.

20 MR. DE ORCHIS: May I be heard on this  
21 point?

22 THE COURT: Yes.

23 MR. DE ORCHIS: The objection was as to hear-  
24 say. As to hearsay, I would agree with the Court that  
25 as to hearsay that is objectionable. However, as to

mda

1 what the captain believed and what the captain's intent  
2 was in this case in which an allegation is being made  
3 that the captain wilfully and with premeditation did  
4 something, then what the captain had heard is important  
5 as to what he believed and what he intended. Not  
6 necessarily that the facts were true, but what his state  
7 of knowledge was, if he is going to be accused of intend-  
8 ing deliberately to do something, and I think in the  
9 cases we have cited the courts have said that -- have  
10 discussed what it was the captain believed, although he  
11 may not have been right in what he believed, and they  
12 said that where he was innocent of his -- that is, if  
13 there was a mistaken belief, there was no gross negligence  
14 if he honestly but mistakenly believed something, and  
15 for that purpose only, and not for the truth of the  
16 statements, I think the Court should consider this testi-  
17 mony.

18  
19 MR. MALOOF: May I be heard on that, your  
20 Honor?

21 THE COURT: Yes.

22 MR. MALOOF: Even on that point, Mr. De Orchis'  
23 point may be well taken, except that the captain even  
24 has the name of the Coast Guard man wrong. Mr. Baum-  
25 gartner, if my memory doesn't fail me, doesn't mention



mda

that Coast Guard man, though he was supposed to have been there listening to him, and the Coast Guard man is now deceased, there is no way to find out what he really said.

So I do object to any part of that going in, your Honor, for any purpose.

MR. WARNER: May it please the Court, this was cross examination, and, in addition, it was an oral report to the master of the ship.

MR. MALOOF: Not to the master. The master heard a conversation between two other people.

MR. WARNER: It is still an oral report with respect to his vessel.

THE COURT: Well, I will change my ruling to this extent. I will let this testimony stand merely as evidence of what the captain says he heard stated, not for the truth of the contents. This does not prove that the vessel was seaworthy; it proves only, if you believe the captain, that he heard somebody named Commander Rynbergen state that somebody had certified that it was seaworthy. I will let it stand to that extent.

Now, the next one is page 132, lines 1 to 25.

Let me read it first.

(Pause.)

THE COURT: This one is certainly not very clear to me. There is a lot of colloquy, and it all seems to boil down to the fact that the captain testified that Commander Rynbergen said to Mr. Baumgartner, "They are in good shape."

Now, I don't know what that proves. What is your argument on that one? Is this the same conversation that we heard about just a minute ago?

MR. MALOOF: That is the boldest kind of hearsay. That is my argument on that. He is supposed to have said, "They are the best I have ever seen," when they leaked on two voyages, and they leaked on the next voyage, and wasted away. As a matter of fact, it couldn't have been Commander Rynbergen. That was the surveyor who did the survey for New York Navigation.

THE COURT: We can't try the whole case with reference to this rather incomprehensible answer.

MR. MALOOF: It is hearsay, your Honor.

THE COURT: I will allow this to stay in on the same theory that it may have some relevance, that Captain Dumble says that he heard a man named Commander Rynbergen say, "They are in good shape." This is not proof that they were in good shape. It goes only, I suppose, to the issue of the captain's intent.



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Now, 133, lines 1 to 4, that is all the same conversation. This is where he testifies as to what Mr. Baumgartner said.

I will let that stay in for the same purpose only.

And now we get to page 134, line 1 to line 24.

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Well, I will try to be consistent and let this stay in for the same purpose as the evidence of what the captain was told, not for the truth of what he was told.

This apparently has to do with what the mate told him -- that he checked the holds and found them to be completely dry.

For whatever it is worth I will let it stand for that purpose, but not as evidence that they were completely dry.

I think that disposes of the motion to strike.

Now we will go down to the things which you object to.

The first is page 9, line 25, to page 10, line 25.

(After examining) I will allow that on the same theory as evidence of what the captain said he was told; not for the truth of the contents -- always bearing on the captain's intent, since the claim is made that the captain intentionally wanted to injure the plaintiff's cargo.

MR. MALOOF: Judge, may I be heard on what your Honor just said?

THE COURT: Isn't that your claim?

MR. MALOOF: It is not necessary that the plaintiff prove that the captain intentionally wanted to



1 mkp2

2 injure plaintiff's cargo. It is only necessary that he knew  
3 of facts which should have caused him to act; that he  
4 declined intentionally to perform a manifest duty, being  
5 disregarding for the obvious consequences.

6 I do not claim that the captain had a personal  
7 vendetta against the Iligan cargo, your Honor.

8 THE COURT: But you do claim in your brief that  
9 he intentionally wanted to injure it?

10 MR. MALOOF: No, sir. That is wilful misconduct  
11 in sending the ship to sea in an unseaworthy condition where  
12 it could not possibly have reached Iligan in good condition.

13 MR. DE ORCHIS: May I call your Honor's attention  
14 to the pretrial order in which the plaintiff states what his  
15 contentions are, and under No. 4:

16 "The defendants wilfully and with premeditation  
17 chose to continue the voyage at a time when" they knew  
18 there was water in the hold and the defendants knew the  
19 consequences of the water entering the cargo hold.

20 MR. MALOOF: I think that is what I just said,  
21 and that is what I will prove.

22 MR. DE ORCHIS: If he wants to back down from  
23 "wilfully" and "with premeditation," then all we have is  
24 simple negligence.

25 MR. MALOOF: I will not back down from the proof

mkp3

in this case, and that is what we intend to prove. I think that has already been proven from the captain's deposition, and there are more coming.

However, I refer your Honor also to plaintiff's brief where we refer to the Warsaw Convention cases, and one case in which an airplane hit the mountain and the owner of the airplane said that in order for the plaintiff to win he would have to prove that the pilot intended to hit the mountain, and the Court said, "Nonsense." It was the prior flight plan which was the wilful part of the case, and it amounted to wilful misconduct.

THE COURT: Taking your version of it that you do not claim that he really had a vendetta or intention to ruin the steel, nevertheless you claim that he acted wilfully and with premeditation --

MR. MALOOF: Yes, we do.

THE COURT: I suppose that what he was told may have some bearing on whether he acted wilfully and with premeditation.

MR. MALOOF: Taken into context with all that he knew, your Honor.

THE COURT: So I am going to overrule the objection to the passage on page 9, line 25, to page 10, line 25.



1  
2 MR. MALOOF: Under the limitation.

3 THE COURT: I appreciate that it is impossible to  
4 get a clear picture of this as we go along in this deposi-  
5 tion, particularly in the way it has been done thus far,  
6 reading pieces of it here and there.

7 Now I will have to study this and get it all  
8 together and I can read it in a clear fashion later.

9 MR. MALOOF: Yes, sir.

10 THE COURT: I am going to make some suggestions  
11 of what we should do in connection with the other depositions --

12 MR. MALOOF: Yes.

13 THE COURT: -- in an effort to facilitate that  
14 process, but we are involved on this one now and we might  
15 as well finish it up.

16 MR. MALOOF: Is the plaintiff's objection over-  
17 ruled under the same limitations?

18 THE COURT: Yes.

19 MR. MALOOF: That is, not for the truth?

20 THE COURT: Not for the truth, but as evidence  
21 of what the captain was told.

22 MR. MALOOF: Thank you, sir.

23 THE COURT: Now page 16, lines 2 to 18.

24 I will overrule the objection on the same basis.  
25 All these things so far seem to be testimony by the captain

1 mkp5

2 as to what he was told. It may have some bearing on his  
3 state of mind and premeditation.

4 Page 18, lines 10 to 21.

5 Well, this is a little different. This is where  
6 the captain was asked for his opinion as to the condition  
7 of the vessel.

8 Mr. Fish I think asked this question.

9 Does anybody want to be heard on that?

10 MR. MALOOF: I think, your Honor, that it is  
11 a conclusion of mixed fact and law, which is certainly not  
12 appropriate for the captain to make when in fact the answer  
13 is obvious. I think it is for your Honor to decide whether  
14 the ship was seaworthy or not.

2 15 THE COURT: I agree with you, but I am going to  
16 let it stand for what it is worth. Although phrased in the  
17 language of the opinion, it amounts to testimony by the  
18 captain that the vessel was seaworthy. I do not know what  
19 the captain knew about it, but that is what he said. Of  
20 course, I am going to have to decide whether it was or not,  
21 regardless of what he says.

22 It does not really make any difference what he  
23 said on that subject.

24 Now page 125, lines 12 to 24.

25 Well, we had this before. This is one of the



1  
2 passages which he thought Mr. Maloof read, so I will rule on  
3 that the same way.

4 The next one, page 132, lines 1 to 21 -- we had  
5 that before. I have ruled on that.

6 Then page 134, lines 2 to 25.

7 We have had that before, according to my notes,  
8 and I have ruled on that one.

9 That leaves us only page 154, line 18, to page  
10 156, line 6.

11 Well, this is sort of blind to me, but I  
12 gather that this is a passage which relates to some survey  
13 reports which were marked Exhibit 17 at the deposition,  
14 and the effort was made by Mr. Fish to ask the captain what  
15 the survey report said.

16 I suppose that is competent.

17 Do you want to be heard on that?

18 (No response.)

19 THE COURT: Nobody seems to be anxious to be heard,  
20 so I am going to sustain the objection to page 154, line 18,  
21 to page 156, line 2.

22 If the defendants want to offer the survey re-  
23 ports, I will rule on them at the time. I don't suppose  
24 they can get them in by asking the captain to read off what  
25 they say.

mkp7

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1 All right, now having survived that, how do you  
2 want to proceed? Do you want to read into the record --  
3 to copy into the record everything in Captain Dumble's  
4 deposition that isn't already in and that I have not  
5 excluded, or do you want simply to have it deemed part of  
6 the record?  
7

8 MR. WARNER: Deemed part of the record and marked  
9 as an exhibit.

10 MR. MALOOF: I think we can deem it part of the  
11 record, your Honor.

12 MR. DE ORCHIS: I agree.

13 THE COURT: All right, then we will mark this  
14 deposition, which is now marked 29 for identification, with  
15 a defendant's letter, it being understood that a large part  
16 of it has already been laboriously read into the record,  
17 and we are now receiving everything that hasn't been read  
18 into the record except as I may have excluded a bit in my  
19 recent rulings.

20 Is that agreeable as a matter of mechanics?

21 MR. WARNER: Agreeable to me.

22 MR. DE ORCHIS: Yes.

23 THE COURT: Is it agreeable to you as a matter of  
24 mechanics, Mr. Maloof?

25 MR. MALOOF: Yes, it is, your Honor, completely.



1 mkp8

2 THE COURT: All right, then we will give this a  
3 defendants' number.

4 (Defendant Weyerhaeuser Exhibit A received  
5 in evidence.)

6 MR. WARNER: May it please the Court, to complete  
7 the deposition, may I offer the exhibits which were identi-  
8 fied and referred to by the witness during the deposition?

9 THE COURT: You may offer them, certainly.

10 Any objection?

11 MR. MALOOF: Identify them first. I don't  
12 remember what they were. The depositions were taken some  
13 time before the trial.

14 MR. WARNER: You can look at page 170 or you may  
15 look at them now (handing).

16 MR. MALOOF: Thank you.

17 May I ask Mr. Warner a question, your Honor?

18 THE COURT: Yes, you may.

19 (Conference off the record.)

20 MR. MALOOF: No objection, your Honor.

21 THE COURT: There being no objection, we will  
22 receive all these exhibits in the Dumble deposition.

23 You can give them one letter, that is, Weyer-  
24 haeuser's B-1, B-2 and B-3.

25 (Defendant Weyerhaeuser Exhibits B-1, B-2 and  
B-3 received in evidence.)

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THE COURT: I don't want to make this complicated, but I thought we would give them as many numbers as there were documents. If there are eight documents we will have eight numbers, whatever it is. Just count them up.

THE CLERK: You want this all separated?

THE COURT: Yes.

(Defendant Weyerhaeuser Exhibits B1, B2 and B3 renumbered and received as Defendant Weyerhaeuser Exhibits B1 through B10 in evidence.)

THE COURT: Maybe we can go on to something else while that is being done.

What's next?

MR. MALOOF: To read portions of the deposition of Mr. Baumgartner.

THE COURT: I don't want to do what we did yesterday. It is hopeless to sit here for hours listening to you read rapidly. I can't possibly follow it while you read. If you are going to read extensively from this, and if you don't want to offer it all for some reason, then I would like to have you indicate by page and line the portions that you wish to offer, and if there is any objection to any of that I will rule on it. And after we get through with that you can give it to the reporter.



mda

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1 if you want it copied into the record, but it may very  
2 well turn out that the defendants will immediately  
3 offer everything else and that all we really need to do  
4 is to mark the thing as an exhibit. We will save hours  
5 if we proceed that way.  
6

7 Have you got many passages from this?

8 MR. MALOOF: Yes, sir, I do, because it is  
9 quite relevant. I certainly will adopt your Honor's  
10 reasoning.

11 May I then say that we wouldn't object to  
12 putting the whole deposition in, but we are concerned on  
13 objections to hearsay which have been reserved for the  
14 trial. We have no desire to waive those kind of  
15 objections.

16 If it could be understood between the parties  
17 that your Honor certainly, without motion or objection  
18 from me, has the power to strike hearsay, it would be  
19 perfectly appropriate for the plaintiff. I see no other  
20 way of doing it. I would be happy to read page and  
21 line number.

22 MR. WARNER: What Mr. Maloof does not offer  
23 we will offer, the whole thing. I assume he will read  
24 certain sections of it. The rest of it we will offer  
25 automatically.

1  
2 THE COURT: The portions that you are not  
3 offering, Mr. Maloof, you are not offering because you  
4 think they raise a hearsay objection?

5 MR. MALOOF: I don't recall what objections  
6 I had made during this deposition. May I have a minute,  
7 your Honor, with my assistant?

8 (Pause.)

9 MR. MALOOF: If I might refer to one objection  
10 I will also agree to put this deposition in evidence.

11 THE COURT: All right.

12 MR. MALOOF: Harold Baumgartner, page 24, line  
13 8 to line 13, with my objection on that question.

14 THE COURT: Page 24, lines 8 to 13, doesn't  
15 contain an answer, but I guess if you look down the  
16 page through all the colloquy you finally get an answer  
17 on line 24 which says, "They were." But it is meaning-  
18 less to me without reading this in full.

19 Is this talking about some inspection report  
20 or something?

21 MR. MALOOF: Yes, sir. Your Honor has  
22 noticed that apparently I have not included the answer  
23 in that. Apparently it goes off on another line.

24 I will withdraw the objection, your Honor.  
25 I will put the deposition in. It is just not clear.



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1 mda  
2 THE COURT: I think it is better not to  
3 bother about things like that. Obviously, I am not going  
4 to pay any attention to material which is incompetent,  
5 if it turns out that it is. I can't make head or tail  
6 out of it from that little passage.

7 So you are offering the whole thing?

8 MR. MALOOF: No, sir. Well, I think it  
9 ought to go in by the Court perhaps, as a court document.

10 THE COURT: I am not offering any exhibits.

11 MR. DE ORCHIS: I understood Mr. Warner to  
12 offer the whole deposition.

13 MR. MALOOF: Mr. Warner said he would  
14 offer the parts I didn't offer. Perhaps the three  
15 attorneys can offer it as a mutual exhibit.

16 MR. DE ORCHIS: I agree that it go in as Mr.  
17 Warner's exhibit. It is his witness.

18 Does Mr. Warner agree?

19 MR. WARNER: I agree.

20 MR. MALOOF: I agree with that.

21 THE COURT: I am going to treat it as a  
22 plaintiff's exhibit because we are on the plaintiff's  
23 case.

24 (Plaintiff's Exhibit 30 was received in evi-  
25 dence.)

MR. MALOOF: I am not offering the whole deposition as part of my case, your Honor.

THE COURT: All right. Then what parts are you offering?

MR. MALOOF: Page 3, lines 5 and 6.

Page 3, lines 12 and 13.

Page 3, line 19 to page 4, line 12.

Page 6, line 9 to line 13.

Page 6, line 17, to page 7, line 9.

Page 7, line 18, to page 8, line 15.

Page 9, line 1 to line 16.

Page 9, line 22, to page 10, line 12.

Page 11, line 7 to line 16.

Page 12, line 4 to line 8.

Page 12, line 22, to page 13, line 4.

Page 15, line 18, to page 16, line 20.

Page 27, lines 7 to 11.

Page 28, line 14 to line 18.

Page 35, line 7, to page 41, line 7.

Page 42, line 5, to page 44, line 25.

Page 45, line 7, to page 60, line 25.

Page 61, line 21, to page 65, line 22.

Page 66, line 17, to page 69, line 21.

Page 70, line 23, to page 72, line 2.



Page 72, line 25, to page 73, line 9.

Page 75, line 23, to page 85, line 3.

Page 85, line 10, to page 88, line 14.

Page 89, line 13 to line 19.

Page 90, line 3, to page 91, line 17.

Page 92, lines 10 to 12.

Page 92, line 23, to page 93, line 10.

Page 93, line 22, to page 95, line 14.

Page 98, line 17 to line 25.

Page 99, line 5, to page 100, line 23.

Page 109, line 19, to 110, line 22.

Page 111, line 17 to line 20.

Page 114, line 3 to line 15.

Page 115, line 20, to page 116, line 3.

Plaintiff offers those parts of the deposition  
of Mr. Baumgartner, your Honor.

THE COURT: Any objection to any of them?

MR. WARNER: No objection, your Honor.

MR. DE ORCHIS: No objection.

THE COURT: All right. That will be re-  
ceived in behalf of the plaintiff.

Now, I understand that the defendant Weyerhaeuser  
is offering the rest?

MR. WARNER: Yes, your Honor, and the exhi-  
bits which were marked and identified at the deposition.

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1 mda  
2 THE COURT: Is there any objection to the  
3 exhibits?

4 MR. MALOOF: Not if I have a chance to see  
5 them, your Honor. I think some of the exhibits  
6 that were put in by defendant Weyerhaeuser on these deposi-  
7 tions were huge sheaves of documents. Can we at least  
8 see what is appended in this case?

9 MR. FISH: Not here.

10 MR. WARNER: Not in this deposition.

11 MR. MALOOF: Which exhibits are you talking  
12 about.

13 (Pause.)

14 MR. MALOOF: If it please the Court, one of  
15 the exhibits is a complete file of I don't know how many  
16 papers, and I have no idea what's in it. If I can have  
17 a chance to study it, perhaps --

18 THE COURT: All right.

19 MR. MALOOF: These may not be any problem,  
20 these look like only a few.

21 THE COURT: I am going to receive the deposi-  
22 tion and we will mark it Defendant Weyerhaeuser's Exhibit  
23 C, and I am going to consider that it is part of the re-  
24 cord without having it physically transcribed, and I will  
25 feel free to read it from beginning to end in chronological



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order, which will make it a lot simpler for me than  
leafing back and forth from one page to another page.

Now, as far as the exhibits go, I will mark those  
for identification and give Mr. Maloof a chance to  
look at them during the brief luncheon recess today.

If there are four exhibit letters call them  
Defendant Weyerhaeuser's Exhibits D1, 2, whatever number  
it is.

(Defendant Weyerhaeuser Exhibit C was received  
in evidence.)

(Defendant Weyerhaeuser Exhibits D1 through D7  
marked for identification.)

THE COURT: All right, now we have another deposition to deal with.

MR. MALOOF: That is all the depositions -- oh, I am sorry, Mandle. We have one more. There were three altogether.

THE COURT: Very well.

MR. MALOOF: Shall we do the same thing?

THE COURT: I suggest we follow the same practice. We have gotten down to a system now.

MR. MALOOF: May I hand your Honor the original of Mr. Mandle's deposition (handing).

THE COURT: Yes.

MR. MALOOF: The deposition of Mr. S.I. Mandle, taken on December 2, 1969.

The plaintiff will read in the following portions -- well, I will refer to the following parts and offer them in evidence.

Page 3, lines 15 and 16.

Page 3, lines 20 and 21.

Page 4, line 5, to page 5, line 13.

Page 5, line 16, to line 18.

Page 6, line 2, to line 14.

Page 7, line 6, to page 10, line 15.

Page 10, line 25, to page 13, line 8.



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2 If it please the Court, at this stage the witness  
3 identifies various logbooks for the Iligan voyage and the  
4 two prior voyages which the plaintiff offers in evidence.

5 Do you have the original?

6 MR. WARNER: Here you are (handing).

7 MR. MALOOF: This includes the deck logs and  
8 the engineer's logbook for the three voyages in question.

9 MR. WARNER: Can we have a better identification  
10 of those?

11 MR. MALOOF: I think perhaps we should.

12 MR. WARNER: The engineer's logbook, John  
13 Weyerhaeuser, 19th of February, 1967, to 23rd June, 1967.

14 What number will that be?

15 THE COURT: Looking at the deposition list of  
16 exhibits, I see it was marked on the deposition as Exhibit 6,  
17 the logbook.

18 You might as well keep them in the same order.

19 You just picked up one at random, I gather.

20 MR. MALOOF: We start with June --

21 THE COURT: They are all listed at the end of the  
22 deposition. I suggest we save that for the moment until you  
23 have finished telling us the portions of the testimony  
24 which you wish to offer.

25 MR. MALOOF: Very good, your Honor.

2 To continue, page 14, line 3, to page 16, line 8.  
3 Page 16, line 14, to page 18, line 3.  
4 Page 18, line 19, to page 19, line 8.  
5 Page 20, line 10, to page 21, line 2.  
6 Page 21, line 16, to page 22, line 3.  
7 Page 22, line 11, to line 13.  
8 Page 22, line 19, to line 21.  
9 Page 22, line 25, to page 23, line 16.  
10 Page 24, line 24, to page 29, line 8.  
11 Page 29, line 24, to page 32, line 6.  
12 Page 32, line 16, to page 33, line 14.  
13 Page 34, line 3, to line 25, the whole page.  
14 Page 35, line 5, to page 35, line 25.  
15 Page 38, line 9, to page 39, line 3.  
16 Page 39, line 11, to line 19.  
17 Page 41, line 8, to page 43, line 25.  
18 Page 44, line 5, to line 14.  
19 Page 45, line 6, to page 47, line 4.  
20 Page 48, line 22, to page 50, line 13.  
21 Page 52, line 21, to page 54, line 23.  
22 Page 55, line 13, to page 56, line 16.  
23 Page 57, line 16, to page 58, line 24.  
24 Page 59, line 21, to page 60, line 22.  
25 Page 61, line 8, to page 64, line 3.



Page 65, line 17, to page 66, line 14.

Page 66, line 22, to page 67, line 3.

Page 67, line 22, to page 68, line 6.

Page 68, line 16, to page 70, line 4.

Page 71, line 24, to page 72, line 24.

Page 73, line 14, to page 75, line 4.

Page 75, line 10, to line 14.

Page 75, line 22, to page 85, line 3.

Page 85, line 25, to page 86, line 5.

Page 87, line 15, to page 88, line 12.

Page 89, line 16, to line 25.

Page 90, line 9, to page 91, line 21.

Page 92, line 15, to page 93, line 2.

Page 93, line 13, to line 16.

Page 93, line 19, to line 25.

That is all, your Honor.

THE COURT: Any objection to any of that?

MR. WARNER: No objection, subject, of course, to the exhibits referred to being introduced.

THE COURT: Well, that will be considered to be in evidence as part of the plaintiff's offer.

Now does the plaintiff offer the rest?

MR. WARNER: Yes, your Honor. Weyerhaeuser offers the balance.

1  
2 THE COURT: Any objection to any of the rest of  
3 it?

4 MR. MALOOF: Just a minute, your Honor.

5 (Mr. Maloof examines.)

6 MR. MALOOF: There is no objection, your Honor.

7 THE COURT: All right, we will mark the deposi-  
8 tion Weyerhaeuser Exhibit E in evidence and treat it in  
9 evidence, treat it the same way that we have the others.

10 (Defendant Weyerhaeuser Exhibit E received in  
11 evidence.)

12 THE COURT: Now that brings us to the exhibits  
13 and Mr. Maloof wanted to offer logbooks as plaintiffs'  
14 exhibits.

15 MR. MALOOF: Yes, sir.

16 THE COURT: And there are how many of those?

17 MR. MALOOF: There are three engine logs --

18 THE COURT: Six of them.

19 MR. MALOOF: What is the total?

20 MR. WARNER: Six of them.

21 THE COURT: There is no objection to them, I  
22 suppose?

23 MR. WARNER: No objection. Shall we use the same  
24 numbers as used in the index of the deposition, your Honor?

25 THE COURT: Keep them in the same order, and we  
will mark the first one the next plaintiffs' exhibit number.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 (TELEPHONE: CORTLAND 7-4580)

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1  
2 MR. WARNER: We are going to use the same numbers  
3 as in the index.

4 THE CLERK: Your next one is Plaintiffs' Exhibit  
5 30, which will be Exhibit 1 on the deposition.

6 THE COURT: Get them in the right order.

7 THE CLERK: Is that received in evidence, your  
8 Honor?

9 THE COURT: Yes.

10 (Plaintiffs' Exhibits 30, 31, 32, 33, 34 and 35  
11 received in evidence.)

12 THE COURT: Plaintiffs' Exhibits 30 to 35 are the  
13 logbooks that were marked Exhibits 1 to 6, respectively, on  
14 the deposition.

15 Now that still leaves us with another batch of  
16 exhibits.

17 Are you offering any more?

18 MR. MALOOF: Mr. Warner has offered every exhibit  
19 from both Mr. Baumgarten's and Mr. Mandle's deposition.  
20 Most of them we have no objection to. However, some of them  
21 are huge files. Can we look at them during the luncheon  
22 period, your Honor?

23 THE COURT: Yes.

24 MR. MALOOF: Good.

25 THE COURT: Now the defendant is offering the

1 mkp7

2 balance of the deposition?

3 MR. WARNER: Yes, your Honor.

4 THE COURT: So that means we give this a defendant's  
5 identification number.

6 Defendant Weyerhaeuser Exhibit E-1 will be  
7 the same thing as Exhibit 7 on the deposition. They go with  
8 the deposition of Mandle, which is Exhibit E, I guess.

9 Now Mr. Warner, will you hand the clerk these  
10 things -- we are talking about the documents that are  
11 Exhibits 7 through 18, I guess, on the deposition.

12 MR. MALOOF: These are for identification at  
13 this time.

14 THE COURT: E-1 is the batch of papers that  
15 was marked No. 7 on the deposition.

16 THE CLERK: In evidence or for identification?

17 THE COURT: Just for identification.

18 We will take a short recess while these exhibits  
19 are being marked.

20 (During the recess the following exhibits were  
21 marked.)

22 (Defendant Weyerhaeuser Exhibits E-1 through  
23 E-11 for identification.)

24 (New York Navigation Company Exhibit B for  
25 identification.)



1  
2 MR. MALOOF: Will you agree to put in the picture  
3 of the starboard clapper valve in evidence, Mr. DeOrchis,  
4 since the survey seems to agree that it leaked also?

5 MR. WARNER: We disagree with that.

6 MR. MALOOF: May we have the report?

7 THE COURT: Let us do one thing at a time.  
8 The theory was that we would mark plaintiffs' exhibits the  
9 six logbooks. We have done that. They are Exhibits 30 to  
10 35.

11 Then we were going to mark for identification  
12 Defendant Weyerhaeuser's Exhibits E-1, E-2, and so forth.

13 The remaining exhibits on the deposition of  
14 Mandle go from 7 to 18, according to this list here.

15 Then we finally found one left over which was a  
16 New York Navigation exhibit on the deposition, and we are  
17 marking that as New York Navigation Exhibit B for identi-  
18 fication.

19 MR. MALOOF: Is that being offered also, your  
20 Honor?

21 THE COURT: I suppose so.

22 Is it?

23 MR. DE ORCHIS: It has been offered.

24 THE COURT: All right. Now Mr. Maloof is going  
25 to look these over during the luncheon hour and tell us

whether he has any objection to these going into evidence.

That is all we can do so far.

Now if you want him to produce something else,  
apart from the deposition --

MR. MALOOF: Yes, sir.

THE COURT: All right.

MR. MALOOF: Shall I continue, your Honor?

THE COURT: Yes.

MR. MALOOF: The plaintiff calls to the stand Mr.  
Herman Berke.

H E R M A N      B E R K E,      called as a witness on behalf  
of the plaintiffs, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. MALOOF:

Q      Mr. Berke, will you tell the Court what you do for  
a living today?

A      I am a surveyor, marind surveyor.

Q      Any specialized type of marine surveyor?

A      Hull and machinery.

Q      Hull and machinery?

A      Yes.

Q      And what did you do in March of 1967?

A      I was a surveyor, hull and machinery.



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Q Do you have your own company for that purpose?

A Yes, sir, I do.

Q In March of 1967 did you receive an assignment revolving about damage to cargo on a ship called the John Weyerhaeuser?

A Yes, sir, I did.

Q What type of assignment was it, sir?

A To examine the vessel and the aspects concerning the cargo damage and the possible reasons for the intrusion of water and damage to cargo.

Q Did you do that?

A Yes, sir, I did.

Q Will you tell the Court how you went about it, where you had to go and where you first made contact with the ship, sir?

A I visited the vessel in Iligan City in Mindanao of the Philippines -- I don't have the date -- in March, I believe, of 1967.

I entered the holds No. 2 and 3 and witnessed the physical damage to the cargo and the coating of what apparently to me was a slurry of phosphate.

I examined the vessel as it lay afloat and while the cargo was being discharged and in the process of being cleaned to determine where the water may have entered the

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vessel, where it may have entered the No. 2 and 3 holds, the physical aspects of the vessel, the construction of the vessel, the various reports associated with the cargo. I looked at the logbooks, I spoke to the various personnel on board the ship, I consulted with various other surveyors that were attending at the time.

Q Did you come to some conclusion, sir?

A Yes, sir, I did.

Q Will you tell the Court what they were?

MR. WARNER: May it please the Court, apparently the witness is going to be asked to express an opinion. I haven't heard the qualifications of the witness aside from being a surveyor.

THE COURT: I would like to know first what he observed.

MR. MALOOF: Yes.

BY MR. MALOOF:

Q Then, Mr. Witness, will you tell the Court more precisely the factual matter that you observed on this ship with relation not only to the cargo damage, the false bulkhead, but also the hull of the ship as it might have related to the damage to the cargo.

A The vessel arrived at Iligan City. The No. 3 hold still contained a considerable amount of water,



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1 and the cargo, the phosphate cargo, in the No. 3 hold  
2 was in a more or less of a semifluid state, it still con-  
3 tained water, and there was a considerable amount of that  
4 oozed through or penetrated a nonwatertight division  
5 bulkhead between the No. 2 hold and the No. 3 hold which  
6 coated the machinery cargo that was stowed in the No. 3  
7 lower hold.  
8

9 Q Did you see that bulkhead between No. 2 and No.  
10 3?

11 A I saw the bulkhead between No. 2 and 3, yes,  
12 sir.

13 Q That is in the lower hold, of course?

14 A Yes.

15 Q Would you describe it?

16 A A nonwatertight bulkhead. It was constructed  
17 with vertical members and horizontal boards and nailed to-  
18 gether, as I recall, and they had various sections of it  
19 missing. They were not intended to be watertight joints,  
20 and it would be possible that a semifluid cargo that  
21 was wetted and could flow would penetrate and ooze  
22 through from the No. 3 hold into the No. 2 hold.

23 Q Was there any evidence that there had been  
24 some burlap on that bulkhead?

25 A I don't recall that, sir.

Q As you saw that bulkhead, would there be any doubt that water would easily enter through it?

A No, there would be no doubt in my own mind as far as water having the ability to enter through that bulkhead.

Q And then did you go into the No. 3 lower hold while the ship was in Iligan?

A Yes, sir, I did.

Q Did you look at the clapper valves?

A I looked at the starboard clapper valve. As I recall, it still had a cement box around it which was not disturbed.

The port clapper valve had been disturbed, and there was a report, both the Navy S report and some other reports that were issued as to what disturbance to the valve was made, and I saw a repaired valve that was functioning on a temporary basis.

Q You could see the outside of it at that time?

A That's correct.

Q I show you from Plaintiff's Exhibit 15, which is a number of photographs -- I ask you to look at photograph No. 85A, and ask you if you can identify the person in that picture.

A That picture in the lower right-hand corner here



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on this page is myself examining one of the clapper valves. I believe that would be the port one since there is no cement box around it.

Q How far is your face, approximately, from the bottom of that clapper valve, Mr. Berke?

A Six or eight inches.

Q Are you standing on a ladder?

A No, sir, I am on some structural members between the shell frame and the after bulkhead in No. 3 hold.

Q How did you get up there?

A I climbed up structural members.

Q Was it a great deal of trouble for you?

A To the best of my recollection, it was not a great deal of trouble, no, sir.

Q And you got a good look at the bottom of the clapper valve that way?

A That is correct, sir.

THE COURT: May I see that picture, please?

MR. MALOOF: No. 85A, your Honor.

(Document handed to the Court.)

THE COURT: Perhaps this is as good a time as any, Mr. Berke, for me to ask what has been puzzling me since the beginning. I haven't had any real description

1 yet of this device which we are concerned with here.

2 As I understand it, there is a pipe coming down  
3 into this hold which makes a right-angle turn and goes out  
4 through the side of the ship. Is that right?

5 THE WITNESS: That is correct, sir.

6 THE COURT: Now, there is a valve in that  
7 pipe, right?

8 THE WITNESS: There is a valve in it.  
9 There is a valve, a closing device, within the valve it-  
10 self. May I point it out to you, sir?

11 THE COURT: Is the valve inside the pipe?

12 THE WITNESS: No, sir. The pipe attaches  
13 to the valve.

14 THE COURT: That is what isn't clear to me.  
15 There has been talk about a hole in the valve, but I  
16 visualize this as a valve inside a pipe. Have I got  
17 that wrong?

18 THE WITNESS: Yes, sir, you do.

19 THE COURT: All right. Will you describe  
20 it to me? This picture, I am afraid, doesn't help me  
21 very much. It is a nice picture of you, but not  
22 much of anything else.

23 THE WITNESS: May I point it out to you?

24 THE COURT: Yes.



1                   MR. MALOOF:    May I offer the witness some  
2                   photographs that might help on that?  
3

4                   THE COURT:    Yes.

5                   THE WITNESS:   I think that is a clear picture  
6                   he has there (indicating).

7                   This is the pipe that penetrates the deck above  
8                   that leads from the quarters and it is flanged and it  
9                   attaches to the valve.    The valve is this flange  
10                  section, and it goes onto a flange section here.    The  
11                  valve itself is the thing that makes the 90-degree turn.  
12                  So that the pipe is flanged and it attached to the  
13                  valve.    The valve has a 90-degree angle leading overboard.  
14                  The welded section is right on the bottom, just about at  
15                  my elbow in that picture.

16                  THE COURT:    So the pipe comes down to the  
17                  valve and the valve is outside the pipe.    Right so  
18                  far?

19                  THE WITNESS:   Yes, sir.

20                  THE COURT:    And the valve makes a right-angle  
21                  turn and sticks out through the side of the ship?

22                  THE WITNESS:   Sticks out to another flanged  
23                  spool piece.

24                  THE COURT:    What is the flanged spool piece?

25                  THE WITNESS:   That is a penetration that goes

mda.

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through the side of the vessel, the shell plate on the vessel, leading overboard.

THE COURT: Is it sort of like a pipe?

THE WITNESS: Yes, sir, it is.

THE COURT: All right.

You spoke about welding. What welding are you talking about?

THE WITNESS: There was a weldment where the valve itself makes a 90-degree turn which was heavily welded on the bottom in the area of just about my elbow.

THE COURT: Was it a new weld?

THE WITNESS: Yes, it was a new weld.

THE COURT: So when you looked at this thing in March, 1967 there wasn't any hole in it, is that right?

THE WITNESS: No, sir.

THE COURT: And if there had been a hole it was covered up by a weld, is that right?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. MALOOF:

Q Do you have any idea when that weld was put on that valve, Mr. Berke?

A I was issued a report that said that the weld



1 mda

2 was put on in either Mokpo -- two ports in Japan,  
3 where it was repaired by, I believe, Sasevo Heavy Indus-  
4 tries.

5 Q On this voyage?

6 A On this same voyage, yes, sir.

7 Q Will you tell the Court what you saw when you  
8 claimed up the bulkhead of the ship to look at the valve?

9 A I could look at the valve just externally, and  
10 I could see the -- I sounded the valve with a hammer,  
11 though I don't recall, I most likely sounded it with a ham-  
12 mer and looked at the weldment which was quite heavily  
13 put on the underside of it where the casting of the valve  
14 itself makes a 90-degree turn leading towards the shell  
15 of the vessel.

16 Q If you wanted to look on the inside of that  
17 valve, was there a way to do it at that time?

18 A Yes, sir, you could. There was a bolted  
19 cover plate on the top of the valve.

20 Q Can those bolts be removed with a wrench or a  
21 screwdriver?

22 A They can be removed with a wrench. The nuts  
23 can be removed with a wrench and the cover plate can be  
24 lifted off.

25 Q What is the purpose of that cover plate, sir?

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1  
2 A To gain access to the inside of the valve,  
3 and also the clapper, which swings on it which acts as  
4 the disk, is affixed to that cover plate.

5 Q You mean if you remove the cover plate you can  
6 look in and see the clapper valve?

7 A That's right. You can see the internals  
8 of the valve.

9 Q And you can see if it wasn't on the lugs?

10 A You can see everything inside of the valve.

11 Q And you can see corrosion and wastage, if it  
12 existed?

13 A Yes.

14 Q Just by looking?

15 A That's correct, sir.

16 THE COURT: Did you remove the cover plate?

17 THE WITNESS: I don't believe I removed the  
18 cover plate at that time. The vessel was in the  
19 Philippines, and I believe it was agreed by all interested  
20 parties since she was tight in the voyage from Japan  
21 to the Philippines it wouldn't be disturbed until the  
22 vessel returned to the States. At that particular time  
23 we did not lift it. It was opened in San Francisco.

24 Q Did you ever get to see the inside of that  
25 valve, Mr. Berke?



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1 mda  
2 A Yes, sir, I did.

3 Q When was that, please?

4 A I believe when the vessel arrived and went on  
5 dry dock in Todd's Shipyard, Alameda, California.

6 Q Were you told that the port clapper valve was  
7 to be taken off the ship and be available for inspection?

8 A That's correct.

9 Q And you were invited to come and see it?

10 A That's correct.

11 Q Did you do so?

12 A Yes, sir, I did.

13 Q Will you tell us then what you saw when you --  
14 where was the valve when you saw it, and what did it  
15 look like?

16 A I arrived at Todd-Alameda at the time the  
17 vessel was put on dry dock. I looked at the vessel  
18 when she was on dry dock for possible other means of  
19 entrance of water into the vessel, and specifically in No.  
20 2 and No. 3 holds. I was present when the valve was  
21 bodily removed, both the port and starboard valves were  
22 bodily removed from their location in the No. 3 hold.

23 They were opened and cleaned and examined when  
24 the valves were placed on the deck of the vessel. As  
25 I recall it, Mr. Baumgartner, who represented the owners

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1 and operators of the vessel, had suggested that the  
2 starboard valve did not look in too bad a condition  
3 and it could be blasted, further examined after it was  
4 cleaned, and it was possible, since he did not have a  
5 replacement, if it was in suitable order, to be replaced  
6 in time.  
7

8 The port valve, since it was welded and  
9 already repaired temporarily, the disk was badly mutilated,  
10 part missing, and beyond economical repair.

11 Q What is the disk, sir?

12 A The disk is the clapper that I did see in the  
13 Philippines in the chief engineer's room that was removed  
14 by the Japanese in Japan.

15 Q That is the actual clapper valve on the inside?

16 A That is the swinging clapper, yes, sir.

17 Q That is the swinging clapper valve?

18 A Yes, sir. That is the swinging portion.

19 THE COURT: When did you go to Alameda,  
20 California?

21 THE WITNESS: When the vessel arrived in  
22 Alameda.

23 THE COURT: When was it?

24 THE WITNESS: Approximately one month later.

25 THE COURT: About April, 1967, is that



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1  
2 right?

3 THE WITNESS: May 5th and 6th of 1967.

4 THE COURT: You told us that at that point  
5 the port valve was opened and you saw a mutilated disk,  
6 is that right?

7 THE WITNESS: I saw the mutilated disk in the  
8 Philippines. It was in the chief engineer's office.  
9 I saw a mutilated body.

10 THE COURT: That is what confused me, be-  
11 cause I understood you first to say that you saw in  
12 Alameda, California a mutilated disk, and then you said  
13 something about how you saw a disk in the Philippines.

14 Now, will you try to make clear just what it  
15 is you did?

16 THE WITNESS: I think we have a problem  
17 with the nomenclature. I usually refer to what you  
18 would call a clapper as a disk. That clapper or disk  
19 I saw mutilated when I was in the Philippines, in Iligan  
20 City. I was in the chief engineer's room. The in-  
21 ternal or the body of the valve, including the seat that  
22 the disk lands against to act as a closure, that portion  
23 I did not see mutilated until it was removed from the  
24 vessel and put on deck and the clapper opened in May of  
25 1967 in San Francisco.

1 mda  
2 THE COURT: So what you saw in May, 1967  
3 was not the disk, it was something else?

4 THE WITNESS: It was the internal portions  
5 of the valve, yes, sir.

6 THE COURT: Are there any names for those  
7 internal portions?

8 THE WITNESS: Well, the cover plate, the lug  
9 attachment, which is integral with the cover plate casting,  
10 and the seat itself, which is -- I don't recall whether  
11 that would be pressed into the body of the valve or it would  
12 be screwed into the body of the valve, but that is  
13 internal in the valve itself. And that is generally of  
14 bronze construction, as is the disk or clapper.

15 BY MR. MALOOF:

16 Q Mr. Berke, had the disk been removed from the  
17 valve itself in the Philippines or prior thereto?  
18 Is that how it got into the first mate's cabin?

19 A It was removed prior and it got into the chief  
20 engineer's cabin where I saw it.

21 Q The chief engineer's cabin?

22 A That's right.

23 Q And that is how you saw it separate?

24 A Yes, sir.

25 Q Would you describe the mutilation of the disk?



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1 A To the best of my knowledge, as I recall  
2 it, the disk or clapper was twisted and out of shape and  
3 heavily cut.  
4

5 Q Let's go back a bit, Mr. Berke, and ask how  
6 long you have been a hull surveyor?

7 A Fourteen years, approximately.

8 Q Did you go to see, sir?

9 A Yes, sir, I did.

10 Q In what capacity?

11 A I was a chief engineer, sir.

12 Q For how long?

13 A About ten years.

14 Q What were your duties as chief engineer, sir,  
15 roughly?

16 A Generally the care and maintenance and  
17 repair and operation as far as machinery goes of the  
18 vessel itself.

19 Q Would a clapper valve like this come within  
20 your jurisdiction as chief engineer?

21 A It would be part of my duties to keep it main-  
22 tained to the best of my ability, yes.

23 Q How about pumping the bilges?

24 A They would also be within the jurisdiction  
25 and one of the requirements of the chief engineer's duty.

1  
2 Q When you saw the inside of the valve itself,  
3 and the seat, what was its condition at San Francisco or  
4 Alameda?

5 A The seat was partly missing and quite banged  
6 up and indented, and it apparently appeared to be beyond  
7 economical repair.

8 The hole, the portion that was welded where it  
9 was holed through, also precluded its reasonableness to  
10 continue using that particular valve in service.  
11  
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25



T6 2 Q You say that valve was beyond use again in your  
3 opinion?

4 A In my opinion, I would not use the valve again.

5 Q The disk when it is properly seated inside of  
6 the valve, does it sit on any pieces of metal?

7 A It swings; it is supported from the cover plate  
8 which is above it on a brass pin which fits into two --  
9 what we refer to as lugs, allowing the clapper to swing  
10 freely and the force of the water or the seas against the  
11 clapper which is seated against the seat, it would move it  
12 against the seat and preclude and disallow the seas to move  
13 back up against the clapper valve and the toilets above.  
14 With the seas below the valve or the force of the water  
15 greater than the seas, it would allow the refuse and the  
16 soil from the toilets to flow outward into the sea.

17 Q It allows the waste to go out but not the sea-  
18 water to come in?

19 A This was the intended purpose of the clapper valve,  
20 yes.

21 Q When it is in good condition.

22 A Yes.

23 Q What was the condition of what you just referred  
24 to as the lugs when you saw them?

25 A The lugs on the cover plate were wasted to a

1  
2 great extent, probably in excess of 35 or per cent, which  
3 precluded their ability to support a pin which in turn would  
4 not allow the clapper to be supported on the overhead or to  
5 be allowed to swing or function properly.

6 Q When you say "wasted," what do you mean by that?

7 A In this particular case "wasted" means it is no  
8 longer there.

9 Q It disappeared.

10 A Yes.

11 Q Are you using "wasted" in that sense? That is  
12 a term of art among seafaring people and surveyors?

13 A Well, "wasted" would mean a deterioration and a  
14 reduction of the material. In this particular case the  
15 reduction would be worn down, either eroded or corroded away  
16 which in turn possibly brings it to a point where it is  
17 weakened, where the forces would break it off.

18 Q Did you see evidence of such corrosion inside this  
19 valve?

20 A I did see evidence of this corrosion inside the  
21 valve.

22 Q Is that the same as saying rust?

23 A Actually -- well, corrosion is a form of rust.

24 Q Now, did you take any photographs in San  
25 Francisco?



1  
2 A Yes, I did.

3 Q I show you one photograph and ask you if you can  
4 identify this as a photograph that you took, or perhaps it  
5 is at least a representation, a fair representation of what  
6 you saw (handing)?

7 A Yes, sir, I did take the photograph.

8 Q And what is that a picture of?

9 A This is a picture of the weldment on the under-  
10 side of the clapper valve where it was built up -- most likely  
11 as per the report in Japan.

12 MR. MALOOF: Mark it for identification, please.

13 (Plaintiffs' Exhibit 36 marked for  
14 identification.)

15 MR. MALOOF: I offer it in evidence (handing).

16 (Defense counsel examine.)

17 Q Is this a picture of the No. 3 port clapper valve  
18 on the SS John Weyerhaeuser, Mr. Berke?

19 A I believe it is, yes, sir.

20 Q Were you told that this was the valve? Did the  
21 Weyerhaeuser Company tell you that that was that particular  
22 valve?

23 A I was present when it was removed bodily from its  
24 location on the vessel.

25 MR. MALOOF: Is that all right, Mr. DeOrchis?

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MR. DE ORCHIS: That does not answer my question. I am just trying to find out whether you know of your own knowledge that this photograph is a photograph of that particular valve? Do you know that of your own knowlege?

THE WITNESS: I took the photograph.

MR. DE ORCHIS: You took the photograph.

Well, that answers the question; all right.

MR. MALOOF: Does that remove your objection to this photograph, Mr. De Orchis?

MR. DE ORCHIS: Yes, I have no objection to the photograph.

THE COURT: Received.

xx  
(Plaintiffs' Exhibit 36 received in evidence.)

THE COURT: Where did you take this photograph?

THE WITNESS: To the best of my knowledge, as I recall -- I do not have my notes in front of me -- in San Francisco when the valve was removed from this location on the port side of No. 3 hold and brought up on deck.

THE COURT: Is San Francisco the same as Alameda?

THE WITNESS: Yes, sir.

THE COURT: This is the time you were there in



May, 1967?

THE WITNESS: Yes, sir.

BY MR. MALOOF:

Q Now, sir, did you have a chance to look at the inside of the valve just opposite the weld -- the weld is on the outside, I take it?

A Yes, that is correct.

Q Did you see the inside part of the valve where that weld was on the outside? Did you see the inside of the valve?

A Yes, sir.

Q At that place? And what did you see there?

A The valve was welded and there were no holes or anything, but you could see the difference -- it was a steel casting and the weldment itself subsequently put in. The valve was cut in half and then quartered again so that you could get a good cross-sectional view of the material in the valve itself.

Q And were you able to conclude somewhat whether the valve had -- whether the valve had filled in the hole or not?

A Yes, sir, I did.

Q And what did you conclude from what you saw?

A The weldment was also visible and physically

1 capable of being ascertained. The weldment was on the inside  
2 of the valve as well as the outside of the valve, which led  
3 me to conclude that a hole was filled with weldment.  
4

5 Q And that the weldment went right through the body  
6 of the valve?

7 A Yes, sir.

8 Q How long would you say that weld was?

9 A I believe it was approximately four inches in  
10 width by approximately an inch and a half to two inches in --  
11 four inches in length by approximately an inch and a half or  
12 two inches in width. The depth of the casting I believe  
13 was about 3/8ths of an inch at that point.

14 Q Four inches long.

15 A Approximately.

16 Q Mr. Berke, would you have any idea what the thick-  
17 ness of a valve like that in that place is when it is new?

18 A Probably 3/8ths to 1/2 inch.

19 Q In your career as a chief engineer have you seen  
20 many clapper valves?

21 A I have seen quite a few clapper valves.

22 Q Have you seen them new?

23 A Yes, I have seen new clapper valves.

24 Q And have you seen them corroded?

25 A Yes, I have seen corroded clapper valves.



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1 Q Are you able to give the Court your opinion as  
2 to how long it would take for corrosion to put a hole through  
3 a new clapper valve, a hole like the one that must have  
4 existed in this one (indicating)?  
5

6 A Well, various aspects concern how long it would  
7 take. There is also an erosion factor, since the valve  
8 has a change in area, a change in direction which would add  
9 to the reduction in the metal of it.

10 Q May I add to my question, under normal use for  
11 what it was designed for on a ship which is used regularly.

12 A I would say the expectant life of a clapper valve  
13 would be a number of years.

14 Q Before it would get holed through from corrosion?

15 A Yes, sir.

16 Q Captain, I show you another photograph and ask you  
17 if you can identify it (handing)?

18 A Yes, sir. I believe this is a photograph of the  
19 ventilator that I had taken on the Weyerhaeuser in San  
20 Francisco leading down to the No. 3 hold.

21 Q This ventilator goes down to the No. 3 hold?

22 A To the best of my recollection, yes, sir.

23 Q And did you take this picture?

24 A Yes, sir.

25 Q And is this a fair representation of what you saw

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with your own eyes on the John Weyerhaeuser?

A Well, that is a picture of the ventilator there.

Q An actual representation, isn't it?

A Yes, sir.

MR. MALOOF: For identification.

(Plaintiffs' Exhibit 37 marked for  
identification.)

MR. MALOOF: I offer it in evidence (handing).

MR. DE ORCHIS: Objection. I do not see the  
relevancy of a photograph of another part of the ship that  
nobody is claiming was leaking.

MR. MALOOF: This vent goes right down to the No.  
3 lower hold. The witness just said that.

THE COURT: You might ask him where it is.

BY MR. MALOOF:

Q What is that picture again, Mr. Berke?

A That is a ventilator trunk, cowl-type ventilator  
that leads to the No. 3 hold.

THE COURT: Is it, on the deck?

THE WITNESS: It is on the deck, yes, sir.

THE COURT: What does that have to do with the  
case?

MR. MALOOF: Your Honor, that vent has got a hole  
in it. There was some testimony in this case that the ship



1 was well maintained. I am putting that in to show that it  
2 is not quite that well maintained.  
3

4 MR. WARNER: May I ask a question, your Honor?

5 MR. MALOOF: And also it could possibly have  
6 leaked water right into the No. 3 lower hold.  
7

8 MR. DE ORCHIS: The testimony that the ship was  
9 well maintained on the stand yesterday was by his own sur-  
10 veyor.

11 MR. MALOOF: Does that mean that I cannot put in  
12 any other proof in this case?

13 MR. DE ORCHIS: Okay.

14 THE COURT: You may ask a question.

15 PRELIMINARY CROSS EXAMINATION

16 BY MR. WARNER:

17 Q Sir, you say this was No. 3 lower hold?

18 A No. 3 hold.

19 Q No. 3 hold or the 'tween deck -- where is it?

20 A I don't recall. It is the No. 3.

21 Q As I understand it, the trunk -- the trunk part  
22 is the part that comes up. It is the pipe that goes into a  
23 compartment and it is the one where we are talking about a  
24 cargo compartment, is it? It is a wide pipe, 12 or 18  
25 inches --

A Or 24.

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Q -- or 24, and it goes up through the deck and this is on the top, you have the big cowlings that is like a sort of mushroom laying on its side, and the wind blows through that down into the cargo compartment.

So now what I am trying to determine from you, this pipe here, the trunk as you call it, where is that located? What part of the ship are we talking about?

A That is on the after end of the No. 3 hold -- most likely, as I recall this thing, to the best of my recollection, just forward of the midship house -- just immediately forward of the midship house.

Q Are you telling me that the trunk or the ventilator on the after end of the No. 3 goes all the way down into the lower hold, or does it stop in the 'tween deck?

Let us assume for the moment -- straighten me out now -- we are now standing in No. 3 lower hold, and it is forward where the Court is sitting --

MR. MALOOF: Your Honor, I have offered a photograph to show the condition of the ship.

THE COURT: He may examine on the voir dire.

It would be helpful if you make your questions a little crisper.

The witness told me that this was a ventilator on deck.



Is there anything more to it than that?

MR. WARNER: Your Honor, he has come back and said it goes all the way into the hold --

THE COURT: He did not say that.

Q Does it go into the hold?

A It goes into the hold. I do not know whether it goes in the upper 'tween deck or the lower hold. It goes into the hold. It penetrates the deck.

Q The distance from the bottom of the hold up to the 'tween deck is about 18 or 20 feet, isn't it?

A Approximately.

Q Where did you take the picture? what is that supposed to delineate?

A That is on the deck.

Q That is on the deck of the vessel?

A Yes, sir.

MR. WARNER: I have no objection.

THE COURT: Do you have an objection, Mr. De-Orchis?

MR. DE ORCHIS: If the owner has no objection, I have no objection.

THE COURT: All right, received.

(Plaintiffs' Exhibit 37 received in evidence.)

THE COURT: May I see that, please.

(Handed by the clerk to the Court.)

MR. MALOOF: May I continue, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. MALOOF:

Q Mr. Berke, I show you another photograph and ask you if that is familiar to you? Is it a photograph that you took, and is it a representation of what you saw on the John Weyerhaeuser in the Philippines (handing)?

A This is a picture, a photograph that I took and I had in my file. To the best of my recollection, it is either the same ventilator or a different view of it, or the other one on the other side on the No. 3 hold -- the No. 3 hatch on deck, of the ventilator trunk.

Q And from your experience at sea and as a hull surveyor does it teach you anything about the John Weyerhaeuser?

MR. DE ORCHIS: I object to the form of the question.

THE COURT: Sustained.

Q What did you interpret this to mean? Why did you take a picture of it?

A It showed some wastage, deterioration of the



ventilator trunk.

Q Describe the wastage in that photograph.

A It would appear visually that there are sections of the ventilator trunk that has a reduced thickness to it, which would indicate that there was some rust or some scale, or in this particular case some maintenance would have been applied because it is painted, but there is a reduction in the material.

Q In other words, they painted over the corrosion and wastage?

A There is a reduction in the material, yes, and it is painted.

MR. MALOOF: For identification.

(Photograph marked Plaintiffs' Exhibit 38 for identification.)

MR. MALOOF: I offer it in evidence (handing).

MR. WARNER: Defendant Weyerhaeuser cannot see the relevancy of this, but to save time, no objection.

THE COURT: Received.

(Plaintiffs' Exhibit 38 received in evidence.)

BY MR. MALOOF:

Q Mr. Berke, I show you another photograph and ask you what that is (handing)?

1  
2 A I believe it is a picture of a man who climbed  
3 up the side of the vessel -- most likely the No. 3 hold,  
4 the after end of No. 3 hold, and he is in the vicinity of  
5 the port clapper valve of No. 3 hold.

6 Q Is this another man climbing up to the valve?

7 A The quality of the picture is not -- the man has  
8 a pair of coveralls. I don't recognize the man, but there  
9 is a man up alongside the clapper valve, the port clapper  
10 valve.

11 Q Did you take this picture?

12 A Yes.

13 MR. MALOOF: For identification.

14 (Plaintiffs' Exhibit 39 marked for  
15 identification.)

16 MR. MALOOF: I offer it in evidence (handing).

17 MR. WARNER: No objection.

18 THE COURT: Received.

19 (Plaintiffs' Exhibit 39 received in  
20 evidence.)

21 BY MR. MALOOF:

22 Q Mr. Berke, in your duties as chief engineer, did  
23 you have occasion to check the condition of the clapper valves?

24 A Yes, sir, I did.

25 Q Will you tell the Court how you did it?



1  
2 A Generally you would examine it with a test hammer,  
3 externally, the sound for the soundness to see if there is  
4 any deterioration or anything. You would lift the cover-  
5 plate up and look at the clapper, the disk -- that is, the  
6 clapper disk, the seat, the pin, the lugs, the gasket, and  
7 the general internal condition of the valve itself, free it  
8 up and make whatever repairs would be indicated or whatever  
9 else would make it so that it would be safely operable.

10 Q If you just wanted to check the outside of a  
11 valve, what would you do, sir?

12 A You would sound it with a test hammer.

13 Q You would hit it.

14 A Yes, sir.

15 Q What would be the purpose of doing that?

16 A To determine just how sound it is, and if you can  
17 dent it so far as thickness, and the ability for it to con-  
18 tinue in service.

19 Q You might get some idea of how thin it was, is  
20 that it?

21 A That is correct.

22 Q Did you come to a conclusion after seeing whatever  
23 facts you could of the source of the water into the No. 3  
24 lower hold?

25 A I have stated my opinion in a report -- looking

1 at the vessel on drydock and examining the other hull areas,  
2 and in consultation with the other attending surveyors in  
3 the Philippines; as I say, also further extended by looking  
4 at the vessel on drydock, and the only reason for water to  
5 enter the No. 3 or No. 2 hold as I could have determined it  
6 at that time would have been through a leaky either port or  
7 starboard or both clapper valves.  
8

9 Q Were there hull surveyors there in the Philip-  
10 pines and in San Francisco for Weyerhaeuser?

11 A There were regulatory bodies in San Francisco and  
12 there was a company representative for Weyerhaeuser in  
13 San Francisco --

14 Q Do you remember his name?

15 A -- and other representatives.

16 I believe Mr. Baumgartner, as I can recall, was in  
17 San Francisco.

18 Q Were there any opinions that you all generally  
19 agreed upon as concerning the entry of water?

20 A There are a few reports of the ABS surveyor in  
21 Japan and also the classification ABS surveyor in the  
22 Philippines, that it was their opinion that the water entered  
23 the vessel either through the port or starboard or possibly  
24 both clapper valves.  
25

MR. DE ORCHIS: I would object to the opinion



1 stated to him by other experts, since they cannot be cross-  
2 examined.

3  
4 THE WITNESS: I refer to reports.

5 THE COURT: It comes a little late, but I will  
6 sustain it.

7 I do not think you can tell us what somebody else's  
8 opinion is, other than the witness himself.

9 Q What was your opinion, sir, as to the entry of  
10 water?

11 A My opinion as to the entry of water was probably  
12 due -- most likely due to the port and starboard or both  
13 clapper valves in No. 3 hold.

14 Q Did you study the logbooks in this case?

15 A I examined the logbooks, yes, sir.

16 Q Deck and engine?

17 A Yes, sir.

18 Q Do you have an opinion as to when this leakage  
19 might have begun on this ship from this source?

20 A It is my opinion that the leakage started prior to  
21 the start of this voyage.

22 There are notations of a considerable amount of  
23 water found in the No. 3 hold and in a prior voyage from  
24 soundings recorded in the logbooks.

25 Q Did you study the pumping records of prior

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1  
2 voyages?

3 A Yes, sir, I did.

4 Q Were they sent to you?

5 A I have seen many notations of a considerable large  
6 amount of pumping in the No. 3 hold on a prior voyage.

7 THE COURT: Where are the bilges on the vessel?

8 THE WITNESS: On this particular vessel the No. 2  
9 and No. 3 holds are common, with a non-watertight bulkhead.

10 You have a weld on the after end of the No. 3  
11 hold, both port and starboard, in which the sounding pipe,  
12 which leads from the deck, drops down into it, and it is a  
13 box of approximately seven feet in width, running towards  
14 the starboard, approximately 18 inches in length by approxi-  
15 mately 18 inches in depth.

16 THE COURT: Are the bilges in an area under what  
17 I would call the floor of the hold?

18 THE WITNESS: They are recessed in the tank top,  
19 yes.

20 THE COURT: Now you have lost me on that.

21 MR. MALOOF: That is the floor, your Honor.

22 THE COURT: What do you mean by "recessed in the  
23 tank top"?

24 THE WITNESS: The lower hold is -- there are  
25 doublebottom tanks. They have watertight and airtight



1 flooring on a plate -- that would be what you would call the  
2 floor, and on the after end of it the vessel normally has  
3 a drag, that is, she trims aft, and the water would flow  
4 aft and the water would flow into these recessed boxes  
5 from which the bilge pump would pump it out -- it is a  
6 reservoir.  
7

8 THE COURT: Try to make it simpler for a non-  
9 nautical person.

10 THE WITNESS: Yes, sir.

11 THE COURT: The bottom of the hold is what I call  
12 a floor?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is there a bilge under that floor?

15 THE WITNESS: There is a recessed box -- a box  
16 which would act as a reservoir on the after end that fits  
17 into that floor.

18 THE COURT: What I am trying to get at, if I can  
19 first establish the construction, is how does the water get  
20 out of the bilge under the floor of the hold?

21 THE WITNESS: There is a pump in the engine room  
22 which is called a bilge pump, and it is piped to this  
23 reservoir which works by suction in the reservoir, and the  
24 bilge pump pumps that water overboard.

25 THE COURT: I am not concerned with pumping the

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water overboard. Suppose you did not have any pump, and if you had water in the bilge would it eventually get out into the hold?

THE WITNESS: Yes, sir.

THE COURT: How would it do that?

THE WITNESS: Well, by overflowing this reservoir. When the depth of the water gets above 18 inches it would continue filling up the hold.

THE COURT: Well, is there a little well in the floor of the hold that goes down to the bilges; is that it?

THE WITNESS: The well would be considered what you call -- where we take the soundings. That is the lowest extremity of the floor, where you would take the sounding. That is lower than what you just referred to as the floor -- what we call the tank top.

MR. MALOOF: May I ask the witness to draw a picture of it, your Honor?

THE COURT: All right.

There has been talk here about water in the bilges on earlier voyages and about how the water got out of the bilges into the hold.

MR. MALOOF: Mr. Berke, will you draw --

THE COURT: I have not been able to figure out how that occurs.



BY MR. MALOOF:

Q Mr. Berke, would you draw a picture of what the Judge wants to know about the bilges so that it will be clearer (handing to witness)?

(Witness draws.)

MR. MALOOF: Will you please mark that for identification.

(Plaintiffs' Exhibit 40 marked for identification.)

BY MR. MALOOF:

Q Mr. Berke, will you try with that drawing that you just made to answer the Judge's questions in as much detail as you can?

A This bottom line (indicating) indicates the bottom plating of the vessel which is exposed to the sea. The construction of this Liberty-type vessel has a double-bottom tank, which is approximately 42 inches in height. That has a tank top steel construction which is welded, and that is watertight and airtight. The cargo space is above the tank top. Any water that would find its way into the hold would normally flow aft because the vessel is lower -- she is trimmed aft, would flow aft along the tank top, and find its way into the bilge, what we call a rose box. It has a perforated plate on it which would act as a

1 mkp

385 a  
Berke-direct

316a

2 strainer to allow water in it and normally disallow the cargo  
3 into that area, which would tend to plug it.  
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1 A (continuing) Bilge piping fit into this  
2 rose box, and that is attached to the engine room. The  
3 soundings are taken from the deck through the sounding  
4 pipe over here, which leads down into this rose box, and  
5 by sounding the rose box from the deck or the bilge from  
6 the deck you would know how much water you have in this  
7 rose box.  
8

9 Now, this is approximately 18 inches in height,  
10 so that when the water in here is above 18 inches, then  
11 the water would be all over the various departments in the  
12 hold or in the cargo.

13 THE COURT: So the bilge is only this little  
14 box which you call a rose box?

15 THE WITNESS: That is a bilge well, yes,  
16 sir. That is the bulge.

17 THE COURT: What's in this large area marked  
18 double -- some kind of a tank?

19 THE WITNESS: Bottom tank.

20 THE COURT: What is in that tank?

21 THE WITNESS: At various times either ballast  
22 or fuel bunkers.

23 THE COURT: This rose box is quite small,  
24 isn't it?

25 THE WITNESS: Yes, sir.

1 mda?  
2 THE COURT: So once that is filled up with  
3 water to a height of more than 18 inches it begins to flow  
4 over what I would call the floor of the hold.

5 THE WITNESS: That's correct.

6 THE COURT: That is helpful.

7 But it wouldn't take very long for that small  
8 bilge box to fill up with 18 inches of water, would it,  
9 if there were a lot of water coming in?

10 THE WITNESS: No, sir, it wouldn't.

11 BY MR. MALOOF:

12 Q If you are pumping at the same time does it  
13 take a little longer to fill up the bilge?

14 A If you would continuously excavate it would take  
15 a longer time.

16 Q When you say excavating do you mean pumping?

17 A Removing, yes, sir.

18 Q Is there any other way to get water out of a  
19 bilge well except pumping it out?

20 A I would say that would be the only way I could  
21 think of to get the water out.

22 THE COURT: Do you want to offer that in  
23 evidence?

24 MR. MALOOF: Yes.

25 THE COURT: It would be helpful as a diagram



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Berke-direct

of the appearance of this bilge. Any objection to it?

MR. WARNER: No objection.

THE COURT: All right. Received.

(Plaintiff's Exhibit 40 was received in evidence.)

BY MR. MALOOF:

Q Mr. Berke, if the only difficulty with this valve were the deformed disk would there have been an entry of water into the cargo hold?

A No, sir, there wouldn't have.

Q Would you explain what else was required for water to come into the ship in this fashion?

A A hole in the body of the valve or a leaky gasket in the cover plate.

Q In other words, the disk is designed to keep sea water, the ocean, out of the pipe, isn't it?

A That is its intended purpose, yes, sir.

Q If the disk doesn't work the ocean will come into the pipe, is that true?

A That's correct.

Q But it won't go into the ship at that stage yet, will it?

A No, sir, it wouldn't.

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Berke-direct

320

1 THE COURT: Where would it go, out of  
2 curiosity, right up into the toilets?  
3

4 THE WITNESS: Yes, if the seas were blowing  
5 hard enough.

6 Q But when there is a hole in the bottom of the  
7 valve as well as a deformed disk or a disk which is not  
8 even on the lugs, then where would the ocean go?

9 A It would gain access into the cargo hold.

10 Q When water comes in in that fashion will you  
11 explain to the Court how it shows up in the bilge sound-  
12 ings?

13 A The water would find its way back into that rose  
14 box and it would be required of someone in the deck  
15 department to sound the bilges, and when they sound --  
16 twice a day -- and when they sound the bilges they would  
17 find that there is water in the bilges or rose box.

18 Q In other words, the water comes in through  
19 the disk and then into the hole in the bottom of the valve  
20 in this case?

21 A Yes.

22 Q Where is the valve on the John Weyerhaeuser in  
23 relation to the bilge well?

24 A Approximately 20 feet above it.

25 Q Pretty much in the same part of the ship?



1 mda5  
2 A On the after end of the No. 3 hold, yes, sir.

3 Q The port valve is pretty much above the port  
4 bilge well?

5 A Approximately.

6 Q But they are both in the after section?

7 A Yes, sir.

8 THE COURT: Are there two bilge wells?

9 THE WITNESS: Yes, sir, one on the port and  
10 one on the starboard side.

11 Q So the water would come in and find its way to  
12 the bilge wells?

13 A That's correct.

14 Q Who makes the soundings aboard a ship like this?

15 A Usually, under the direction of the officers,  
16 it would be either the carpenter or the boatswain.

17 Q What's the purpose of making soundings in a  
18 cargo hold?

19 A Continually to monitor if there is anything  
20 amiss, if there is any water gaining access to the cargo,  
21 for the protection of the cargo.

22 Also, for the hull's integrity, of course.

23 Q When you were a chief engineer, and you said,  
24 I think, you were in charge of pumping the bilges --

25 A I was basically charged with the operation of

mda6

Berke-direct

the engine room, and this is one of the engine room services.

Q So you were in charge of pumping the bilges, right?

A Yes, sir.

Q Did you record any place when you pumped the bilges?

A Usually you entered it into the engine room log, yes, sir.

Q Would you know the purpose, why that entry would be made?

A To record the duties of the watch engineer, the watch personnel, and what activity they engaged in during their particular watch, and what pieces of equipment were in use during that watch, and also to comply -- in this particular case they would be requested to pump various sections of the vessel by someone in the deck department, so it would indicate their compliance with the request.

Q Are there times when the deck department will tell the engine room to do certain pumping?

A That is correct, sir.

Q From the bilges?

A Various bilges. Otherwise the engine department would not normally know which. They don't take



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Berke-direct

soundings.

Q So they rely on the soundings that are taken by the carpenter?

A That's correct.

Q If someone picked up an engine logbook, a chief engineer's logbook, and read it, say a seafaring man, and read the pumping history, would it mean anything to him --- should it mean anything to him?

A It would appear that the pumping was quite extensive and repetitive and almost daily and a considerable period of time, and specifically oriented to the No. 3 hold.

Q Is that what you noticed when you looked at the log?

A There were quite a few notations of pumping the No. 3 hold, yes, sir.

Q As distinguished from other holds?

A That's correct.

Q As a seafaring man, what did that mean to you?

A Offhand, I believed it would have been an indication of something being wrong and apparently should be investigated or investigated further than just rather continue pumping.

Q When we are talking about pumping we are talking

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Berke-direct

about pumping what?

A We are talking about pumping bilge water overboard.

Q When you say it is an indication of something wrong, can you be more specific than that?

A I personally would be inclined -- I believe a prudent man would be inclined to investigate why so much pumping would be required.

Q Why would you be so inclined?

A Because it is not normal.

Q And having looked at the logbooks in this case, would you say from your experience that what you saw was not normal prior to the Iligan voyage?

A In my opinion, it would appear to me it would not be normal or perhaps excessive.

Q Do you know what kind of a system the Weyerhaeuser Company had for sending copies of the logbook to the home office?

MR. DE ORCHIS: Objection, unless we lay a foundation for that. Was he an employee of Weyerhaeuser?

MR. MALOOF: Do you have to be an employee to know that?

MR. DE ORCHIS: Then let's find out how he



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Berke-direct

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1 knows.

2 THE COURT: Sustained.

3 MR. MALOOF: I withdraw the question.

4 THE COURT: Wasn't there something on that  
5 in the depositions?

6 MR. MALOOF: Yes. I thought I would simply  
7 advise the Court it was done by carbon copy pullouts  
8 sent to San Francisco, but I will withdraw the question.

9 BY MR. MALOOF:

10 Q In your investigation of the facts concerning  
11 this case, Mr. Berke, did you consider the characteristics  
12 of this case in connection with the 1966 Safety of Life  
13 at Sea Convention?

14 A I don't understand your question, Mr. Maloof.

15 MR. MALOOF: I withdraw the question.

16 Q Does the SOLAS, or the Safety of Life at Sea  
17 Convention, have to do with how deep a ship can be laden?

18 A There is a Convention, with most nations  
19 signatories, that would be used as a common yardstick of  
20 what would be referred to as safe conduct since the  
21 vessels interchange in world ports, yes, sir.

22 Q Is there any relation between that Convention  
23 and the size of cargo holds and the number of water-  
24 tight bulkheads you have?

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Berke-direct

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1  
2 A I am not conversant with that particular aspect.

3 Q Do you recall the John Weyerhaeuser received  
4 permission to return to the United States after the  
5 Philippines?

6 A She got permission to proceed to return to the  
7 United States, yes, sir.

8 Q Were you involved in any part of this?

9 A That would be a classification requirement.  
10 I was there solely for investigative work on behalf of  
11 principals there.

12 Q Did you discuss this case or this valve with  
13 the chief engineer of the John Weyerhaeuser?

14 A I looked at the disk or the clapper that he  
15 had in his room, and I also looked at the reports. I  
16 don't recall whether he had the reports or what transpired  
17 and what repairs were made in Japan under two different  
18 circumstances.

19 Q What reports are those?

20 A There was a diver's report, an ABS report,  
21 and a few other reports, I believe, of some other surveyor.  
22 I have some of the comments of the reports which were fur-  
23 nished me of what preceded the repairs and the findings  
24 in Japan.

25 Q Did you discuss the lugs of the clapper valve



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Berke-direct-cross

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with the chief engineer?

A I don't recall that particular phase of the conversation, no, sir.

Q You may refresh your recollection, if you wish.

(Pause.)

MR. MALOOF: Your witness.

CROSS EXAMINATION

BY MR. WARNER:

Q Mr. Berke, I understand you first saw the John Weyerhaeuser in Iligan City?

A That's correct.

Q Had you ever been on board her before?

A I don't recall ever being on board her before, no, sir.

Q When you went on board, the valves that we have been talking about, the clapper valves, as they are referred to, was the starboard one encased in cement?

A That's correct.

Q So the first time you saw the starboard one was when the vessel arrived at San Francisco, or Alameda shipyard of Todd, is that correct?

A That's correct.

Q Did you observe the valve in place or only on

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Berke-cross

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the deck of the vessel?

A I observed when they broke the cement off and brought the valve on deck.

Q Did you see any sign of leakage of the starboard valve?

A I did not see any sign of leakage of the starboard valve.

Q At any time?

A At any time.

Q Did you see any fault in the gasket or anything?

A I did not see any fault in the gasket.

Q So your opinion that both the port and the starboard were leaking is based upon what someone else told you?

A My conclusion is that it was put in a cement box and tightened and disturbed and it may have been leaking. The cover plate was loose and it may have been leaking.

Q It may have been leaking?

A Yes.

Q Are you certain it was leaking?

A No, sir.

Q The port valve you saw in Iligan City, you climbed up, you testified on your direct, and you looked



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Berke-cross

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at it and you saw welding, and you gave some dimensions as to the amount of the weld that was there. What was the initial hole, do you know, opening?

A No, sir, I do not know what the initial hole was.

Q The process of filling in the weld could have cut away some of the original metal and widened the opening?

A It could have widened the opening, yes, sir.

Q How much?

A I don't know, sir.

MR. WARNER: I ask these seven photographs be marked for identification. They purport to be photographs of the port clapper valve, No. 3 hold of the John Weyerhaeuser on the voyage in question.

MR. MALOOF: Is Mr. Warner saying that they are photographs of that?

THE COURT: He says they are purported to be.

MR. MALOOF: By whom?

THE COURT: By him, I gather.

(Defendant Weyerhaeuser Exhibits F through L, inclusive, marked for identification.)

Q Mr. Berke, am I correct you testified the

mda

Berke-cross

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port valve was brought up on deck and later it was quartered,  
I believe you stated?

A That's right.

Q I show you these photographs and ask if you  
can identify them.

MR. MALOOF: I object to the form of the  
question, your Honor.

THE COURT: Overruled.

A It appears to be the port clapper valve of the  
John Weyerhaeuser.

MR. WARNER: I offer these exhibits in evi-  
dence.

MR. MALOOF: If it please the Court, this  
is the first time we have seen these pictures. If we  
may, we would like to have a minute to look at them.

THE COURT: We will go to lunch now and  
adjourn to 2 o'clock. You can look at the pictures,  
and also at those exhibits. You will remember we are  
holding up on those, the exhibits to the deposition.  
You are going to let me know whether you have any objection  
to those.

Two o'clock.

(Luncheon recess.)



A F T E R N O O N   S E S S I O N

2.00 P.M.

H E R M A N   B E R K E,   resumed.

THE COURT:   At the time we broke for lunch  
certain photographs had been offered.

Is there any objection to them?

MR. MALOOF:   Judge, the plaintiff objects to the  
introduction of those photographs. There is no evidence as  
to who took them. There is no evidence that they are  
actually this particular port clapper valve. As a matter  
of fact, the best evidence of the valve itself would be the  
valve.

Plaintiff earlier in this case sent a letter to  
the defendants to retain it. I believe they retained it.  
I subpoenaed it for the trial, and I call for its production  
at this time.

THE COURT:   May I see the photographs, please?

(Handed to the Court.)

MR. MALOOF:   I might add it doesn't look like  
they are pictures of the entire valve either because the  
inspection plate which used to have the lugs on it isn't in  
those pictures, nor is the disk.

MR. DE ORCHIS:   If your Honor please, may I have  
a short voir dire of this witness on these photographs?

THE COURT: Yes. All that Mr. Berke has said so far, according to my notes, is that they appear to be the port clapper valve.

Go ahead.

PRELIMINARY CROSS EXAMINATION

BY MR. DE ORCHIS:

Q Mr. Berke, you understand that you are still under oath?

A Yes, sir.

MR. DE ORCHIS: May I have the photographs, your Honor?

(Handed to Mr. DeOrchis.)

Q Now, you were on the ship at the time that -- after the ship got back to Alameda when the valve was brought up to the deck for inspection?

A Yes, sir.

Q And at that time was the valve quartered -- had it been cut into four pieces?

A No, it was brought up in one piece on deck.

Q And subsequently when it was cut into four pieces did you see the valve?

A Yes, sir.

Q Where did you see it?

A In the shop in Todd's Shipyard at Alameda.



1  
2 Q Now I ask you to look at this particular black  
3 and white photograph, which is marked Defendants' Exhibit L  
4 for identification (handing) -- take a close look at that  
5 photograph and tell me whether that is a fair representation  
6 of what you saw in that shop that day when you were looking  
7 at the quartered valve.

8 A (After examining) That appears to be the valve  
9 I was looking at.

10 Q Is that the welding that had been placed at the  
11 location where the hole had been?

12 A (After examining) Yes, that appears to be the  
13 weld.

14 Q Now I show you the photograph that you took on  
15 the ship of the valve to demonstrate where the welding was  
16 (handing).

17 Now looking at the two photographs, is there any  
18 doubt in your mind that these are photographs of the same  
19 valve?

20 A They appear to be photographs of the same valve.

21 Q And is that also true of these other photographs  
22 which I now place before you -- that they are at least  
23 fair representations of what you saw in that shop on that day  
24 in Alameda when they showed you the quartered valve?

25 A It appears to be the same valve.

mkp

Berke

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MR. DE ORCHIS: I have no further questions.

MR. MALOOF: Judge, nothing that I have heard just now meets my objection, that I have subpoenaed the valve. It has not been brought here.

THE COURT: We can take that up later.

MR. MALOOF: Yes; and, secondly, this does not seem to be a picture of the whole valve -- if I may ask the witness a question at this time?

THE COURT: You may ask him a question.

PRELIMINARY EXAMINATION

BY MR. MALOOF:

Q Mr. Berke, in these seven photographs that are in front of you now that have been marked in evidence, do you see any picture of the inspection cover with the lugs attached to it?

A No, sir, I do not.

Q Take a good look and be sure.

A (After examining) No, sir, I do not.

Q Do you see any picture of the disk that you said was warped and misshapen?

A No, sir, I do not.

MR. MALOOF: I repeat my objection, your Honor.

THE COURT: I will overrule the objection and receive them. They are offered in evidence for other



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Berke

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features -- such as the disk -- you may do that.

I will receive these.

(Defendant Weyerhaeuser Exhibits F through L  
received in evidence.)

THE COURT: There has been a request made for the  
production of the valve itself, and I suppose this might be  
a convenient time to take that up while the witness is on  
the stand.

Do you have the valve?

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

1  
2 MR. WARNER: No, your Honor.

3 The valve has been lost.

4 I have here an affidavit from lawyers in San  
5 Francisco, of the firm of Lillick, McHose, Wheat, Adams &  
6 Charles, and another affidavit of Mr. D. Thomas McCune, and  
7 I also have one from Robert Ray, a licensed metallurgist.

8 THE COURT: You have no idea where it is?

9 MR. WARNER: May I read the affidavit for the  
10 record, your Honor?

11 THE COURT: Go ahead.

12 MR. WARNER: "D. Thomas McCune, being duly sworn,  
13 says:

14 "I have been a member of the State Bar of  
15 California since January, 1965, and have been in the  
16 employ of the San Francisco law firm of Lillick,  
17 McHose, Wheat, Adams & Charles since September,  
18 1965.

19 "In March of 1967 the Lillick office was engaged  
20 y Weyerhaeuser Line to act on its behalf in connection  
21 with a claim for damage to certain cargo carried in  
22 the John Weyerhaeuser from Baltimore to the Philippines  
23 during the period December, 1966 - March, 1967.  
24 Following this voyage the vessel was scheduled for  
25 drydocking at Todd Shipyards, Alameda, California.



1  
2 It was agreed between myself and the New York  
3 firm then known as Kelly, Donovan, Robinson and  
4 Maloof, the attorneys for the cargo claimants, that  
5 the overboard discharge valve located on the port side  
6 of No. 3 lower hold would be examined while the vessel  
7 was at Todd's. I appointed Mr. Robert Ray, a  
8 metallurgist associated with Testing Engineers, and  
9 Mr. John Walsh, a marine surveyor, to attend on behalf  
10 of Weyerhaeuser Line. Mr. Herman Berke was appointed  
11 to act on behalf of the cargo claimants.

12 "The valve in question was removed from the John  
13 Weyerhaeuser at Todd's and taken to a shop where it  
14 was sectioned in the presence of myself and Messrs.  
15 Ray, Walsh and Berke on May 6, 1967. Following  
16 examination, I requested Mr. Ray to take custody  
17 of the valve and retain it pending a decision concerning  
18 further tests and examinations. I have not seen the  
19 valve since May 6, 1967.

20 "In a telephone conversation with Mr. Donovan on  
21 May 9, 1967, I informed him that the valve was in Mr.  
22 Ray's custody and I requested him to appoint a metal-  
23 lurgist to participate in a further examination of the  
24 valve or to agree to have Mr. Ray act for all con-  
25 cerned. I repeated this request in a letter to Mr.

1  
2 Donovan dated June 28, 1967, and stated that in the  
3 absence of a response I would instruct Mr. Ray to  
4 conduct a metallurgical examination of the valve.  
5 Mr. Donovan responded to my letter on July 5, 1967.  
6 He declined to appoint a metallurgist of his own or to  
7 accept Mr. Ray. He also requested that nothing be  
8 done with respect to the examination of the valve  
9 until some agreement had been reached concerning its  
10 disposition. In view of his position and in view of  
11 the probability that New York would be the situs of the  
12 litigation, I did not issue any instructions to Mr.  
13 Ray concerning disposition or further examination of  
14 the valve.

15 "In October I received a bill from Mr. Ray for  
16 \$100, covering his inspection of the valve on May 6,  
17 1967. This bill was paid on or about February 12, 1968.  
18 Other than the payment of this bill I have no record  
19 or recollection of any contact with Mr. Ray concerning  
20 the valve subsequent to his examination of it on May 6,  
21 1967. The last record in my file concerning the  
22 custody of the valve is a letter to Messrs. Symmers,  
23 Fish & Warner dated May 17, 1968, noting that the  
24 valve was in the custody of Testing Engineers.

25 "On April 17, 1972, I received a letter dated



1  
2 April 13, 1972, from Mr. Fish in which he requested  
3 that the valve be forwarded to New York. I sub-  
4 sequently contacted Mr. Ray by telephone and communicat-  
5 ed Mr. Fish's request. Mr. Ray remembered examining  
6 the valve at Todd's in May, 1967, but was uncertain in  
7 his recollection concerning its whereabouts after that  
8 time. He subsequently informed me that he had tried  
9 to locate the valve but could not find it.

10 "I have at no time since May, 1967, authorized  
11 any person other than Mr. Ray to assume custody of the  
12 valve nor have I instructed him or any other person  
13 to dispose of the valve or perform any tests or  
14 examinations of it.

15 "Subscribed and sworn to before me this 7th  
16 day of July, 1972."  
17  
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19  
20  
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22  
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Berke

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1 May I have this marked for identification?

2 THE COURT: Yes.

3 MR. MALOOF: I object to the entire reading of  
4 the affidavit in evidence. It is highly irregular to  
5 explain the loss of a valuable piece of evidence which the  
6 defendants were requested in writing on March 8, 1967, even  
7 before the ship arrived at Iligan, "Please keep the valve."

8 I object to the entrance of that affidavit in  
9 evidence. I cannot cross-examine it.

10 I ask Mr. Warner to admit that Weyerhaeuser Company  
11 received this letter --

12 THE COURT: Wait a minute. Take it step by step.

13 MR. MALOOF: I am sorry, your Honor.

14 THE COURT: The affidavit of this man, whatever  
15 his name is, will be marked for identification.

16 (Affidavit marked Defendant Weyerhaeuser

17 Exhibit M for identification.)

18 THE COURT: Now you have another affidavit there  
19 that explains your inability --

20 MR. WARNER: Yes, your Honor.

21 THE COURT: -- to produce the valve -- and I will  
22 allow you to read it or submit it.

23 MR. WARNER: Thank you.



2 "Robert Ray, being duly sworn, says:

3 "I have been a licensed metallurgist in the  
4 State of California since 1966. At the present time  
5 I am employed by Testing Engineers, inc., 2811 Adeline  
6 Street, Oakland, California. In 1967 I acted as a  
7 consultant to Testing Engineers, maintained my office  
8 on its premises and used its facilities as required  
9 for my work. In April, 1967, I was contacted by D.  
10 Thomas McCune, Esq., of the San Francisco law firm of  
11 Lillick, McHose, Wheat, Adams & Charles. He requested  
12 me to attend the vessel John Weyerhaeuser while she was  
13 on drydock at Todd Shipyards, Alameda, California,  
14 in order to inspect one of her overboard discharge  
15 vales. I attended at Todd's on May 6, 1967, for  
16 this purpose. The overboard discharge valve located  
17 on the after port side of No. 3 lower hold was removed  
18 from the vessel and taken to one of Todd's workshops,  
19 where it was sectioned in order to facilitate in-  
20 spection. This sectioning was done in the presence  
21 of myself, Mr. McCune, Mr. John Walsh and Mr. Herman  
22 Berke. I was informed by Mr. McCune that Mr. Walsh  
23 was a marine surveyor engaged by him and that Mr. Berke  
24 was a marine surveyor engaged by a New York law firm.  
25 After the valve was sectioned, the other two surveyors

1 and myself examined it. At the conclusion of this  
2 examination the valve was placed in my custody pending  
3 some further decision concerning additional examination  
4 and testing.  
5

6 "I have no present recollection of what I did with  
7 this valve following the examination at Todd's except  
8 that I am certain I did not conduct any further examina-  
9 tions or tests of it. In accordance with usual procedure  
10 I would have taken the valve to the premises of Testing  
11 Engineers, identified it with a tag indicating its  
12 source and placed it in a storage vault used for such  
13 items.  
14

15 "On September 30, 1967, I sent an invoice to Mr.  
16 McCune in the amount of \$100 covering my attendance  
17 at Todd's. This was paid in February, 1968. I heard  
18 nothing further from Mr. McCune concerning the valve  
19 until April of this year when I received a telephone call  
20 from him. Mr. McCune said that the lawyers in New York  
21 had requested him to arrange to have the valve forwarded  
22 to them. He asked me what should be done to accomplish  
23 this. I told him that while I recalled examining the  
24 valve at Todd's, I could remember little else about it.  
25

"Following this conversation I conducted a search  
of the premises of Testing Engineers for the valve



2 but could not find it. (Testing Engineers is still  
3 in the same building it was in May, 1967. Additional  
4 space was acquired in for storage and other purposes.  
5 All storage areas were searched.) I also inquired of my  
6 associates if any of them had any recollection of the  
7 valve, and they replied that they did not.

8 "At this time I am unable to explain the  
9 disappearance of the valve. I am greatly hampered by the  
10 fact that it has been over five years since I examined it.  
11 I can only say that I never authorized its disposition nor  
12 did I ever transfer custody of it to anyone else.

13 "Subscribed and sworn to before me this 29th day  
14 of June, 1972."

15 May I have this marked as an exhibit for identi-  
16 fication?

17 THE COURT: You may.

18 (Affidavit marked Defendant Weyerhaeuser Exhibit  
19 N for identification.)

20 MR. MALOOF: I repeat my objection to its having  
21 been read on the record, your Honor.

22 THE COURT: Overruled.

23 Now does that complete the affidavits?

24 MR. WARNER: Yes, your Honor.

25 THE COURT: Now you have another request.

mkp

Berke

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MR. MALOOF: I have a letter signed by Mr. Grevers, vice-president of New York Navigation Company, to Weyerhaeuser Line, dated March 8, 1967.

I ask Mr. Warner if his client received the original of that letter (handing)?

MR. WARNER: (After examining) This is a letter from your client to us (handing to Mr. DeOrchis).

I don't know offhand whether we got this letter. It is a letter purportedly from New York Navigation to Weyerhaeuser Line. I do not know whether we got it or not.

MR. MALOOF: May we please have this letter marked for identification?

(Plaintiffs' Exhibit 41 marked for identification.)

MR. MALOOF: Your Honor, I do not want to dwell on this too much longer. May I have permission to read about half a dozen lines from the testimony of Mr. Mandle which does bear on this particular question?

THE COURT: All right.

MR. MALOOF: This is the deposition of Mr. Mandle taken December 2, 1969, at page 54, line 17:

"Q Has the valve been retained?

"A The valve was retained. It was turned over to a metallurgist for a report which I have never seen.



mkp

Berke

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1           "Q       Where is the valve now?

2           "A       I don't know.

3                   "Mr. Fish:   Messrs. Lillick advised me they have  
4 it stored in San Francisco."

5                   That is all.

6                   THE COURT:   Now we will continue with the cross-  
7 examination of Mr. Berke.

8                   MR. WARNER:   May it please the Court, if the  
9 affidavit of counsel persists on the adequacy, the competency  
10 of the affidavits I am prepared to fly in Messrs. McCune and  
11 Ray from San Francisco so that he can cross-examine them.

12                   THE COURT:   It doesn't seem to me it makes much  
13 difference. It would be useful to have the physical object  
14 here, but it isn't here. Apparently it has been lost. Now  
15 whether somebody was careless or not in losing it does not  
16 make an awful lot of difference, does it?

17                   MR. MALOOF:   May I at least ask for a photograph  
18 of the missing parts of the valve, your Honor?

19                   MR. WARNER:   I will give you all the photographs --  
20 hold on.

21                   MR. MALOOF:   Thank you.

22                   (Mr. Warner hands to Mr. Maloof.)

23                   MR. MALOOF:   May we examine these, your Honor.  
24 We may want to put some in -- not to hold up the trial.  
25

1  
2 THE COURT: Do you have any further questions of  
3 Mr. Berke?

4 MR. WARNER: Oh, yes.

5 THE COURT: Go ahead.

6 CROSS EXAMINATION CONTINUED

7 BY MR. WARNER:

8 Q I believe on your direct testimony you testified  
9 that the starboard clapper was found satisfactory after  
10 examination, and was replaced and used in No. 3 lower hold  
11 on the next trip of the John Weyerhaeuser, is that correct?

12 A That is correct.

13 Q And the clapper and all of its mechanical features  
14 were in satisfactory condition?

15 A It was reused.

16 Q It was reused?

17 A Yes.

18 Q Was it approved by the American Bureau of Ship-  
19 ping?

20 A It was approved to be reinstalled.

21 Q Was the Coast Guard there?

22 A Yes.

23 Q They approved it as well?

24 A The Coast Guard allowed it to be replaced on that  
25 vessel.



Q What was done on the port side? What did they do there?

A It was replaced with a new valve -- a replacement valve.

Q Now if my recollection of your direct testimony is correct, you indicated that you had gone through the logbooks of the John Weyerhaeuser of the previous voyage, and you had noticed soundings in No. 3; and if I am paraphrasing your testimony correctly, that indicated a problem or trouble to you?

A There was a number of notations in the log where there were soundings found to be quite high.

Q What are the sources of water in a bilge, in your experience as a chief engineer?

A Any number of places could be -- hatches leaking; weather; ventilators; rivets, if it has riveted frames. It could be a valve -- any opening to the sea or possibly in this particular case over here it could have been ingress of water from the sanitary line leading specifically to the port side into the No. 3 hold.

Q How about the cargo itself?

A Some cargo retains water that would come back out. I think the grain cargo that this vessel carried, you would have moisture content in the grain which would

indicate how much water would come out of the cargo. It would be negligible.

Q Grain cargo? Which trip are you talking about now?

A The grain cargo was the one to Madrea and the following cargo was lumber.

Q Let us talk about the lumber. What would the lumber give you?

A I have no knowledge of just how much water the lumber would retain. It would possibly free itself from the lumber.



Q If a vessel goes from a cold climate, say the Pacific Northwest, down through the Panama Canal, where it is quite warm, and then up through the New England coast, does that have any effect on the compartments of the vessel?

A There may be some sweating in the holds, yes.

Q Some or a substantial amount?

A The degree of sweating is -- I can't have any idea what the degree would be.

Q Have you ever looked into the hatch of a vessel when it's come in from Panama, they have opened it up, and it looked as if it were raining in there? Did that ever happen to you?

A No, sir, I have never observed it.

Q You have seen substantial amounts of sweat, though, in a vessel, have you not?

A I have seen sweating in vessels, yes.

Q You have ticked off the hole in the deck and the leaking rivet, and possibly a sanitary line valve --

MR. WALLOF: I object. I don't remember anything about a hole in the deck in the direct testimony.

THE COURT: You better start fresh.

MR. WARNER: I will withdraw the question.

mda2

BY MR. WARNER:

Q Is another source of water in the bilge the manifold hooked up to the bilge system as not functioning properly?

A The manifold that is hooked up is a suction manifold, and, generally speaking, the suction manifold, the disks are not secured the same and they would act as check valves, but it is possible for them to be malfunctioning.

Generally, when the bilge pump is running or when the valves are open you would have a vacuum and the flow of water would be the other way.

Q But it's possible that the water could have backed up through the manifold valves, could it not?

A There may be circumstances where a situation existed where water back up with malfunctioning valves, yes, sir, and other malfunctions.

Q What about the situation you described to the Court this morning, the layout of a Liberty ship, you have the bottom of the vessel, and then you have the double bottoms and you have the bilge wells on the after end of No. 3, and I didn't look at the diagram but I assume you also put in a sounding pipe, did you?

A Yes, sir.



Q Is it possible for water to come down the sounding pipe?

A It's possible if the plug was left open, but the plug is generally attended to twice a day in normal weather. If the plug was left open the seas can break over and drop down.

Q Is there such a thing as a reach rod on this bilge and rose box as well?

A I believe this particular vessel had a manifold in the engine room and all the valves were in the engine room and no reach rods in the hold. There was no valves in the hold, they were all in the engine room.

Q What sort of a fire protection system did the vessel have? I am talking about the cargo compartments now, in particular, 2 and 3?

A I don't know whether this was fitted with steam smothering. It may or may not have been steam smothering, and she may or may not have had the sprinkler and CO2 system. But those are generally the fire fighting that you would have for the cargo spaces.

Q What did the Liberty have in general?

A This vessel was very considerably modified some year before that in Tampa, so she was fitted, specifically tailored for the carriage of lumber.

mda4

Berke-cross

Q My question was, what did the Liberty ship have in general?

A Steam smothering and a sprinkler system.

Q That is the way they came out of the shipyard?

A That is what I believe, to the best of my recollection.

Q Is it your opinion the port sanitary line valve in the lower No. 3 hold was leaking prior to the Iligan voyage?

A It is my opinion it was leaking prior to the Iligan voyage.

Q By the soundings, the amount of water that was in the hold, the pumping, the frequency of the pumping of the No. 3 hold, and by the extent of the weldment that was put on the valve itself.

Q Did you take into consideration the different drafts, the part of the valve which is outside the hold is submerged and at other times, depending on the draft of the vessel, it is not submerged?

A Yes, sir. The valve was underwater when the vessel draws a mean draft of 25.5 inches.

Q When you examined the logbook did you find whenever the vessel was at that draft that the bilges were filled and it was pouring into the vessel?



1           A       The vessel was also leaking when the draft  
2  
3 was less than 25 foot 5, but it seemed like it was more  
4 frequent pumping of the bilge, No. 3 hold, and the sound-  
5 ings would indicate there was more water in the hold  
6 when the vessel was deeply laden.

7           Q       Did you study the logbook during the vessel's  
8 stay in Madras, India?

9           A       I looked at the logbooks in the Philippines  
10 pertaining to when the vessel was in Madras.

11          Q       That is what my question meant to be. You  
12 studied the logbooks of what occurred to the vessel on the  
13 voyage to Madras?

14          A       Yes, sir.

15          Q       What inferences did you draw from your study  
16 of the logbook relating to drafts?

17          A       May I refer to my report, please?

18                   (Pause.)

19          A       This report I have only indicates the log,  
20 the bilge sounding on the lumber voyage en route from the  
21 West Coast to the East Coast, but I have some notes in my  
22 notebook referring to the voyage to Madras.

23          Q       Do you have your notebook with you?

24          A       Yes, sir.

25          Q       Would you like to refresh your recollection?

mda6

Berke-cross

1  
2 A Yes.

3 (Pause.)

4 THE COURT: I am sort of losing track here  
5 with all these waits. What are you looking for? What  
6 are you trying to find out?

7 MR. WARNER: The witness has made an asser-  
8 tion --

9 A I have one notation here at the time I wrote  
10 the report:

11 "Investigation should have revealed that  
12 something may be amiss with leakage into commor No. 2 and  
13 3 cargo hold on the previous voyage to Madras, India."

14 I don't have all the papers here, but it seems  
15 to me I recall something in the log with some problem  
16 with water. I don't know if there was any cargo  
17 damage or anything else in Madras.

18 Q Were you aware that the biennial Coast  
19 Guard survey was made after that trip, the ABS report?

20 A I have noted in my report what the publicized  
21 classification inspection and survey position of the  
22 vessel was at the time.

23 Q As a chief engineer and as a surveyor, would  
24 you expect to find evidence in a cargo compartment if the  
25 No. 3 port sanitary valve were leaking?



1 mda 7  
2 A Will you rephrase that? State it again,  
3 please.

4 Q All right. If you want into No. 3 lower hold  
5 and looked about the hold would you expect, if the valve  
6 were leaking, to see evidence of it any place?

7 A If I was looking for leakage I would tend to  
8 look in that area. And I would also know that if the  
9 vessel is deeply laden at which time I couldn't go into  
10 the No. 3 hold but I -- I would suspect that area.

11 Q What I am asking you is if you looked at the  
12 valve and it was in the condition you say it was in  
13 would it have been obvious to anyone going into that  
14 compartment?

15 A It may have been obvious to me.

16 Q What about the American Bureau of Shipping?

17 A I don't know who was there.

18 Q What about the Coast Guard?

19 MR. MALOOF: I object to the form of those  
20 questions. A lot of people work for the Coast Guard,  
21 your Honor, and they don't all have the same competence,  
22 and the same is true of the ABS.

23 THE COURT: I will allow the question but  
24 it is hard for me to understand it.

25 If there was water coming out of a hole in

1 mda 8  
2 this pipe wouldn't it have been obvious to somebody?

3 THE WITNESS: The water only comes through  
4 the hole in great amounts when the vessel is deeply laden  
5 to 25 foot 5 inches.

6 THE COURT: Then if it is not deeply laden  
7 there is no water coming out?

8 THE WITNESS: Yes, there would be slight amounts  
9 of water coming out when the sanitary system that that  
10 valve serves would be in use, there would be slight amounts  
11 of water.

12 THE COURT: If you didn't happen to be look-  
13 ing at it just when somebody flushed the toilet you wouldn't  
14 be likely to see a small hole way up there in the thing,  
15 near the ceiling, would you?

16 THE WITNESS: That's correct.

17 THE COURT: All right.

18 BY MR. WARNER:

19 Q Would you see evidence of it on the skin of  
20 the vessel?

21 A I don't know what the condition of the skin  
22 of the vessel was at the time. You may have seen evi-  
23 dence on the side of the vessel, yes.

24 Q Isn't that a tried and true way of determining  
25 whether there is a leak in the skin of the vessel, or out



nda9

Bekre-cross

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of a valve, to see if there is any evidence on the paint work? Isn't that the way it is normally done?

A Quite often it would be indicative, yes.

Q You stated in your direct that you served as chief engineer, and I want to ask you what you did or what you observed being done on a vessel prior to its loading cargo with respect to the cargo compartments. What was usually done?

A Very little.

Q Very little?

A Very little.

Q Specifically, did you ever examine the sanitary valve lines in a cargo compartment?

A No, sir.

Q Did you ever serve on a Liberty ship?

A No, sir.

Q Have you ever seen a sanitary valve go through the side of a ship in a cargo compartment?

A Yes, sir.

Q Would you say that it is not the generally accepted practice to go about with a hammer tapping valves each time before you load cargo?

A It is a generally accepted practice not to hammer a valve before each cargo.

mdal0

Berke-cross

Q What is checked in a cargo compartment before a vessel loads cargo, by the entire staff, deck or engine?

A Cleanliness, sources of leakage, if there's been any problems. If there's been any problems you generally investigate why the problems arose.

Q You testified as to sounding this morning. How is the sounding taken? How is it done?

A Generally, either the carpenter or boatswain on scheduled frequency would drop a line from the sounding plug on deck down into the bilge and physically measure how much water shows up on the sounding rod.

Q How is that achieved? They take a sounding rod and put chalk on it and then they drop it down until it touches the bottom of the well?

A And they lift it back out and examine the rod that protruded into the well.

Q And where the chalk has been washed away by the water, that's how you get your reading?

A That's correct.

Q Does the water ever back up the pipe itself, the sounding pipe?

A Occasionally. If the bottom of the sounding pipe might be plugged the water would not drop out.



Q And so it is possible you may not get a true reading?

A It's possible the reading may be high. It would never be low. It would only be low if it is plugged and the water couldn't get to it again. Again, the same reasoning.

Q Just one last question. You referred to something about a rivet, a leaky rivet, as one of the causes of the bilge filling up. Can you spell that out and tell us more about that?

A This particular vessel had riveted frames and occasionally a rivet might loosen and water might enter the hold through a leaky rivet.

Q Or right into the bilge itself?

A Into the cargo hold, which in turn would go into the bilge.

Q And this situation would continue, and then ultimately the rivet might rust up and the hole plug itself, is that not so?

A This is conceivable.

Q It happens not with infrequency on board boats, does it not?

A It depends upon the degree of leakage.

Q You have had seeping rivets, I am sure, and they

mda

Berke-cross

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1 have tightened themselves up, have they not?

2 A Occasionally.

3 Q What's the relationship -- let's compare:  
4 we don't have oil here, but do you ever have a rivet where  
5 you have got oil being carried that tightens itself up?  
6

7 A It would be less likelihood with the oil be-  
8 casue the oil would preclude the rusting as long as the  
9 oil surrounded it.

10 Q This vent trunk that there are pictures of,  
11 what is the significance of the on-deck trunk? What's  
12 that got to do with maintenance?

13 MR. MALOOF: That is not responsive to direct.  
14 I just put the picture in. The witness didn't go into  
15 the reason.

16 THE COURT: It has nothing to do with whether  
17 or not there was water in No. 2 hold, does it?

18 THE WITNESS: There is a possibility if the  
19 vessel took some seas on deck that this may be a source  
20 of water in the No. 3.

21 BY MR. WARNER:

22 Q Did you check that out?

23 A I don't know if the vessel ever took seas  
24 there. I know there was only one date they couldn't  
25 take soundings. How much seas broke on deck I don't



1 mda

2 know.

3 Q Is finding a rusted trunk of a vent unusual  
4 aboard a vessel?

5 MR. MALOOF: Shouldn't we establish the age  
6 of the vessel, sir?

7 THE COURT: Let him answer.

8 MR. MALOOF: At the time of this voyage.

9 A No, a number of vessels have holes in them.

10 Q In all the time you have served as chief en-  
11 gineer, did you ever go about the vessel with a hammer  
12 and tap the valves?

13 A I have tapped some valves, yes, sir.

14 Q Where?

15 A Cargo tanks, to sound just what I have, if I  
16 couldn't open them up.

17 Q That was to determine whether the tank was  
18 full or empty, is that what you mean?

19 A No, not for sounding purposes. For the  
20 soundness of the valve itself.

21 Q What type of hammer did you use?

22 A Sometimes I used a test hammer, sometimes a  
23 ball-peen.

24 Q What did you tell by this?

25 A If I could dent it I don't have too much

mda

Berke-cross

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1 strength in it. If I can put an impression  
2 in it with a ball-peen or a test hammer, or by the  
3 sound, you can generally tell how much material is  
4 there, the relative material there versus another area.  
5

6 MR. WARNER: I remember offering these  
7 photographs. I don't think they were ever accepted.  
8

9 THE COURT: F to L are in evidence.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Q I ask you to look at these and tell me whether you as an expert -- what you can see in those photographs with respect to the shiny metal there?

MR. MALOOF: Your Honor, may I at this time offer these, the rest of the photographs?

THE COURT: You will have your turn.

A I did not understand the question.

(Question read.)

A Shiny metal?

Q Yes, where the cut was made.

A It would appear that where the cut was made it is adequate metal.

Q Can you see any place here where there is inadequate metal? If so, please show us.

A It would appear in this particular photograph --

Q Which one are you referring to?

A -- that this photograph may have a cavity here (indicating).

MR. MALOOF: May we have an identification?

MR. WARNER: The witness is referring to Exhibit J.

A (Continuing) If this thing were turned over you would probably see where it was built up with weldment.

Q You are referring to Exhibit F now, on the weld-

ment itself?

A The cross section of the weldment itself.

Q Aside from the welded area did you notice any other defect in the area?

A Aside from the welded area, there does not appear to be any severe area.

MR. WARNER: Thank you. No further questions.

THE COURT: Any questions, Mr. DeOrchis?

MR. DE ORCHIS: Yes, your Honor.

CROSS EXAMINATION

BY MR. DE ORCHIS:

Q Mr. Berke, yesterday we had a Mr. Davis --

MR. MALOOF: Davies.

Q -- Davies, another surveyor who accompanied Mr. Donovan to Japan and to the Philippines.

Did you also accompany Mr. Donovan?

A Yes, sir, I did.

Q There were two surveyors with you when you arrived there, is that correct?

A Mr. Davies is a cargo surveyor, that is correct, sir.

Q And what was the purpose of bringing you along?

A I believe I was brought along as a hull and machinery surveyor, and Mr. Davies was brought along to



ascertain what the extent of damage to the cargo per se is and conceivably what may be done to recover any of the cargo, if anything.

Q Have you done cargo surveys?

A No, sir, I have not.

Q Who employed you to go to Japan?

A I believe it was Mr. Donovan's firm.

Q That was your principal in this case -- you mentioned on direct your "principal."

MR. MALOOF: I object to relevance, your Honor. Obviously, we employed him in behalf of our client.

THE COURT: I will allow it.

Q All right, let me ask you this: you saw this valve when it was quartered, opened in front of you in that marine shop, did you not?

A Yes, sir, I did.

Q And were you able to tell or can you tell us now, was this a steel valve or was it a castiron valve?

A It was a steel valve, sir.

Q Am I correct that a steel valve is a much better valve to resist corrosion and erosion than a castiron valve?

A I think corrosion and erosion would best be suited by a castiron valve. It is a steel valve because

1 it is a skin valve and strength is required.

2 Q In these photographs that we have marked and which  
3 are now in front of you as Defendants' Exhibits F through  
4 L -- in these photographs do you see any unusual amount of  
5 corrosion?  
6

7 A (After examining) In those photographs I do not  
8 see any unusual amount of corrosion.

9 Q Now, when you took the photograph in the ship  
10 of this same valve, at that time the valve was covered with  
11 the mixture of fertilizer and water, was it not?

12 A Yes, sir.

13 Q And that is shown in the photograph that you  
14 have a little snapshot of?

15 A That is correct, sir.

16 Q And in these pictures, the large pictures, from  
17 A to L, here the valve has been cleaned off, has it not  
18 (handing)?

19 A It appears to be, yes, sir.

20 Q Now, you mentioned that from the size of the  
21 weldment, that was one of the things which you considered  
22 in arriving at your opinion that this valve must have been  
23 leaking even before the voyage in question -- the size of  
24 the weldment.

25 What did you mean by that?



1           A       The amount of material that had to be welded up  
2  
3 and placed in there to reasonably assure the tightness that  
4 the vessel can continue its voyage.

5           Q       That would indicate to you -- that would have  
6 indicated to you that the hole that they repaired was rather  
7 large.

8           A       It would appear that this is what I used as a  
9 basis for my conclusion.

10          Q       Did you ask anyone who had actually seen the hole  
11 what the size of it was?

12          A       I don't recall asking that, no, sir.

13          Q       So your opinion is based on what you imagine the  
14 size of the hole would have been, and that from the size  
15 of the weldment; is that correct?

16          A       And the reports furnished by the people who  
17 attended it at the time.

18          Q       Now, you said the weldment was four inches long?

19          A       That is correct.

20          Q       And how wide was it?

21          A       Approximately an inch and a half.

22          Q       Now, from that size weldment what size hole did  
23 you imagine or assume was there?

24          A       Perhaps three-quarters of an inch in diameter,  
25 if it was circular.

Q Three-quarters of an inch in diameter; about the size, the same as a 3/4-inch hole in a garden hose, am I correct, if it was circular?

A Three-quarters of an inch, yes, sir.

Q Now assume that at the time they were loading this cargo in the Port of Baltimore that in this line as it passed overhead in the hold of No. 3, we had a hole about three-quarters of an inch in diameter, and assuming that the port of this valve is above the waterline, am I correct that it was above the waterline at that point in Baltimore?

A In Baltimore, I believe it was above the waterline, yes, sir.

Q Then assuming that no seawater is coming in as the longshoremen are working, they are building the wells and loading the cargo, and there are 22 toilets upstairs, and let us assume that just one of them --

MR. MALOOF: Objection. That fact is not in evidence, your Honor. There is no evidence --

THE COURT: I will allow it.

Q Is this a sanitary line?

A Yes, sir.

Q Does it serve the toilets of the crew upstairs?

A It serves some toilets on the port side.

Q Will you grant me that it serves at least one



1 toilet?

2 A Yes, sir, it does.

3 Q And how high above this valve are the toilets?  
4 How many feet above?

5 A It varies from 10 to 35 feet.

6 Q So you have a hydrostatic problem here -- in the  
7 pressure you would have when the water would flow that dis-  
8 tance before it hit that valve?

9 A I do not know how full the line is. I would  
10 imagine it would be full. I do not believe there would be  
11 any pressure on it.

12 Q If they flushed one single toilet bowl upstairs,  
13 and it came down this like the distance that you mentioned,  
14 and it hit this elbow -- and that is where the hole was,  
15 at the elbow -- and it had a hole three-quarters of an inch  
16 in diameter, can you tell us what would happen down below  
17 in the hold?

18 A Some of it would leak into the hold.

19 Q And during the course of a day, and the life of  
20 a ship with the toilets being used up above, would you agree  
21 with me that there would be one heck of a smell?

22 MR. MALOOF: Objection, your Honor. Mr.  
23 DeOrchis previously limited his question to one toilet.

24 THE COURT: Overruled.

MR. DE ORCHIS: We do not even know whose.

Q Would you agree with me that if we had a hole in the sanitation line of this kind, with men working down in the hold and men living up above, that by the end of the day we would have a smell down in that hold?

MR. MALOOF: Objection. I think that is going a bit far.

THE COURT: Overruled.

A I don't know about the odor, but there should have been indication of water there, yes.

Q And this water, this leak would be falling 18 to 20 feet down to the deck, would it not?

A It would be falling approximately 20 feet to the deck, yes.

Q Now assuming that this kind of a leak also went on at sea when the port was below the waterline, then would you agree with me that saltwater pouring down through the same hole would leave streaks on the metal bulkhead, red rust?

A It would probably stain some bulkhead if it hit the bulkhead.

Q Now, when you were in Iligan and all the surveyors you talked to in Iligan, did anyone ever mention that there were bright red streaks or any indication of streaking on the bulkhead underneath this thing, this valve?

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1 A When I looked at the vessel in Iligan and the  
2 other surveyors looked at it in Iligan, it was already  
3 disturbed with the removal of the phosphate cargo, of the  
4 valve itself was disturbed with the weldment, and the  
5 starboard valve with the cement box.  
6

7 Q My question was simple enough. I simply asked,  
8 did anyone mention that there were any signs of streaking  
9 on the bulkhead?

10 A I did not hear the comment.

11 Q Now this valve, this clapper valve is not really  
12 a watertight valve at any time, is it?

13 A Watertight?

14 Q Well, I mean when the ship is loaded in such a  
15 way that the valve is below the waterline and the port--  
16 the opening that leads to this valve is below the waterline,  
17 this clapper valve is not designed to be one hundred per  
18 cent watertight, is it?

19 A It is designed to be on the seat -- designed to  
20 prevent the seas from backing in.

21 Q We are already out to sea, but that does not  
22 mean some water won't come in with a surge of sea --  
23 a little bit?

24 A It would not be tight under pressure.

25 Q Then it is fair to say that at no time when the  
ship is at sea is this valve body empty of water, isn't that

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right?

A It would be empty of water in a light ship.

Q You mean when the -- well, I said when she is at sea.

At no time when she is below the waterline, even though the clapper valve is in place, there would still be some water getting into that valve and into the valve body?

A A little normal in a normally functioning valve would probably go through the clapper in the seat.

Q So that any officer going down to that hole to make his inspection during the voyage, when he could get down into the lower hold when there is general cargo there, there would be a continuous leak in this valve hole as long as that valve was below the waterline, isn't that so?

A It would appear that this would be the case, yes.

Q And this would be noticeable to any officer such as you, if you went down there?

A Yes, it would be.

Q Now a Liberty ship of this age -- you have been on Liberty ships, have you not?

A Yes.

Q And your ships do have water in their bilges, isn't that so?

A Yes, sir.



Q Wouldn't you be surprised if you heard of a Liberty ship that did not have water at any time?

A At any time?

Q At any time.

A I would be wary of it, yes.

Q She is probably not in water at all -- she is probably in drydock, isn't that so?

A Something like that.

Q So that water in the bilges is more the rule than abnormal on a Liberty ship or on any freighter for that matter, isn't that correct?

A There is a degree of water and water -- some water would be in the bilge.

Q And in a bilge of this type if you got up to 15 inches, that is not unusual, is it?

A 15 inches would not be. Any substantial amount of water, it can be pumped quickly.

Q You said in your report up to 15 inches you don't worry about, isn't that so?

A If it can be pumped out in a reasonable short order of time, yes, sir.

Q And this bilge well or rosebox, that is 18 inches deep?

A That is correct.

mkp

Berke-cross

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Q And that bilge or rosebox is at the after end of No. 3 hold.

A That is correct, sir.

Q And No. 3 hold and No. 2 hold on this ship were common holds, were they not?

A That is correct.

Q We have the after end of the bulkhead of No. 3 and the forward bulkhead of No. 2, and a temporary bulkhead in between, is that correct?

A That is correct.

Q And the bilge box is at the after end?

A That is correct.

Q Now is it true that if water is spilled at the forward end, it will go back to the after end because of the slant of the ship and the drag of the ship?

A Eventually it would find its way to the after end because of the drag.

Q So if we have, let us say, 5 inches of water over the top of the bilge well or 23 inches of water here (indicating), that does not mean that there is water on the deck in No. 2 hold, does it?

A There may not be if the vessel was loaded on an even trim more or less.

Q Is it customary for ships at sea to have a certain



amount of drag so that the bow is higher than the stern?

A Speed is generally better with a drag, yes, sir.

Q Well, you have seen the logbooks of the ship, and as she went from port to port in her trade didn't she have the usual amount of drag?

A A slight drag, yes.

Q Can you tell me how much lower the after end of No. 3 is compared to the forward end of No. 2?

A I believe it would be approximately 140, 150 feet distance, and you would have to tell me what the difference in the draft would be.

Q It would depend also on the drag, but, at any rate, generally speaking, we can assume the lower end of the after end of No. 3 is lower than the No. 2 hold?

A Generally.

Q And am I also correct that this bilge well at the after end of No. 3 also served the entire No. 2 hold on the ship?

A That is correct.

Q So that any sweat, water coming through the -- water coming from any source, including sweat, including bleeding rivets -- all that water from No. 2 and No. 3 would be served by this one bilge well?

A That is correct.

Q So would you agree with me it would not be unusual if you got somewhat more water in the No. 3 bilge well than, say, in No. 1 which serves only one hold?

A It is a larger compartment, it should have more water.

Q Does it make any difference, is it of any significance that the port side well sometimes showed more water than the starboard well?

A Using hindsight or using --

Q Using any kind of sight. Just try to help us.

A I would be inclined to look for leakage more on the port side. If that continues to show more water on the starboard side, I would be inclined to think that whatever water is finding its way into the port bilge, the bilge well, would be coming from the port side of the vessel.

Q You took into consideration the trip from Madras back to the States, and you must have noticed that in September, for example, she kept getting more water on the starboard bilge well than the port bilge well.

A As a matter of fact, for several days the port bilge well is zero and we got 10, 12 and 15 on the starboard side.

What do you make of that?

I will give you the specific dates.



For example, August 31, zero on the port side;  
four on the starboard.

In the afternoon, zero on the port side, 12 on  
the starboard.

September 1, in the morning, zero on the port  
side, 15 on the starboard.

In the afternoon, zero on the port side, 5 on  
the starboard.

September 2, zero on the port side, 6 on the star-  
board.

In the afternoon, zero on the port side, 15 inches  
on the starboard.

Now the water is on the other side of the ship.  
Do you think the valve is leaking on the other side of the  
ship?

MR. MALOOF: Objection to the form, your Honor.  
The list of the ship would be more. I do not think it is  
a fair question at all.

MR. DE ORCHIS: If Mr. Maloof --

THE COURT: If he can answer it, yes.

Q Now that Mr. Maloof has told you the answer,  
could this be the list of the ship to one side or the other  
according to the waves and the wind?

A That would be a factor with the wind and the sea

on the ship.

Q That would be equally true if on a particular voyage the ship happened to have a little list to port, the water would accumulate on the port side rather than the starboard, isn't that so?

A It would appear that it is conceivable, yes.

MR. DE ORCHIS: No further questions.

THE COURT: Any redirect?

MR. MALOOF: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MALOOF:

Q Mr. Berke, Mr. Warner had some more photographs in his attache case which were apparently companions of these that he has offered in evidence. I ask you to look at them. I will count them first -- 23 of them.

Are these representative of the port clapper valve that came out of the John Weyerhaeuser in San Francisco (handing)? Take a look at them.

(Witness examines.)

MR. WARNER: Weyerhaeuser will stipulate that they are.

MR. MALOOF: What was that, sir?

MR. WARNER: Weyerhaeuser will stipulate that that is what they are.



MR. MALOOF: Are those photographs of the same clapper valve as the seven pictures?

MR. WARNER: So far as I know, they are.

MR. MALOOF: Thank you, sir.

With that stipulation, the plaintiff offers them in evidence, your Honor.

A I believe that is the starboard valve clapper.

THE COURT: You asked him whether they were the same type of valve. Now that is different from saying whether that is the port clapper valve.

Which do you mean?

Q Are these representative -- I think that is the word I used. Is this a representation of what you saw?

THE COURT: Let the witness tell you what they are, if he can do so.

Q What are they?

A (After examining) I believe there is a starboard valve here (indicating).

I do not know whether that is port or starboard (indicating).

This looks like it may be the starboard valve.

This looks like it possibly also is the starboard valve.

Q Yes, go ahead.

1 A (After further examining) This is the port valve.

2 These appear to be the port valve.

3 Q These black and white photographs you identify  
4 as the port valve that you saw in San Francisco?  
5

6 A I don't know if this one is, but the most of the  
7 black and whites appear to be the port valve.

8 I can't identify this valve (indicating).

9 Q You can't identify this one (indicating)?

10 MR. MALOOF: I offer these black and whites,  
11 all of them in evidence, on the stipulation of Mr. Varner  
12 that they are pictures of the port clapper valve.

13 THE COURT: I do not think that he so stipulated.

14 MR. MALOOF: I am sorry, then.

15 THE COURT: You asked him whether they are the  
16 same type of valve and he said, "Yes."

17 Now if you want to make a stipulation, you can go  
18 ahead and do it.

19 MR. MALOOF: Are these pictures of the port  
20 clapper valve or what?

21 MR. WARNER: I have a letter here from the law  
22 firm of Lillick, et al, which states:

23 "We have just received and are forwarding  
24 herewith a set of color and black and white prints  
25 of the photographs of the valve taken by Mr. Maskell



1 at the time the valve was removed from the vessel  
2 in May of 1967."

3 MR. MALCOF: Well, I offer only the black and  
4 white because --

5 MR. WARNER: I do not object.

6 MR. MALCOF: The plaintiff objects to the  
7 colored ones as to the starboard clapper valve. These he  
8 identifies as the port.

9 THE COURT: You see, if you would have taken my  
10 advice and marked these for identification before you  
11 started talking about them, you would not be so balled up.

12 Please mark them for identification right now --  
13 all of them, those black and whites.

14 MR. DE ORCHIS: If your Honor please, the top  
15 photograph --

16 THE COURT: I am aware of that. I want to get  
17 them marked first so that we know what we are talking about.

18 MR. MALCOF: Let us mark all the photographs --

19 THE COURT: Please; mark the black and whites  
20 for identification right now.

21 MR. MALCOF: There you are (handing to the  
22 clerk).

23 THE CLERK: Separately, each one?

24 THE COURT: Yes, with separate numbers.

xx 2 (Photographs marked Plaintiffs' Exhibits 42  
3 through 52 for identification.)

4 THE COURT: Now let me see them, please.

5 (The clerk hands to the Court.)

6 THE COURT: As I was trying to look over your  
7 shoulder while you were being asked about these things, my  
8 understanding was that Exhibit 42 for identification is one  
9 which you said you could not identify; am I right in that?

10 THE WITNESS: That is correct.

11 THE COURT: All right. Now the others, 43 to  
12 52 for identification, what are they?

13 THE WITNESS: They appear to be the port clapper  
14 valve.

15 THE COURT: As it looked when you saw it?

16 THE WITNESS: That is correct, on deck in San  
17 Francisco or Alameda.

18 THE COURT: Are you offering 43 to 52?

19 MR. MALOOF: Yes, sir.

20 THE COURT: Any objection?

21 MR. WARNER: No objection.

22 THE COURT: Any objection from you?

23 MR. DE ORCHIS: No objection.

24 THE COURT: All right, received.

xx 25 (Plaintiffs' Exhibits 43 to 52, inclusive,  
received in evidence.)



1  
2 THE COURT: I don't suppose you are offering 42?

3 MR. MAIOOF: I offer 42 also on the stipulation  
4 of Mr. Warner that that is a picture of the port valve.

5 THE COURT: Is it so stipulated?

6 MR. WARNER: The letter I have from my  
7 correspondent is that it is the valve, and I stipulate that.

8 THE COURT: Is it stipulated by Mr. DeOrchis?

9 MR. DE ORCHIS: I guess if the shipowner stipulates,  
10 since it was not my ship, I really do not have a position  
11 one way or the other.

12 I would for the record object to it on the ground  
13 that the witness has failed to identify it.

14 THE COURT: You object to it?

15 MR. DE ORCHIS: Yes, your Honor.

16 THE COURT: I will sustain the objection as far  
17 as you are concerned.

18 Now I will have to admit it against the ship  
19 because there is a stipulation, which will make it a little  
20 hard but it probably won't make a bit of difference in the  
21 long run.

22 42 is admitted only against Weyerhaeuser.

23 The others are admitted against everybody.

24 (Plaintiffs' Exhibit 42 received in  
25 evidence.)

2 THE COURT: Now if you are going to make any  
3 use of the remaining photographs, please mark them for  
4 identification.

5 MR. MALDOFF: I was just about to do that, your  
6 Honor.

7 Would you mark these, please, for identification.

8 (Plaintiffs' Exhibits 53 through 64, inclusive,  
9 marked for identification.)  
10  
11  
12  
13  
14  
15  
16  
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24  
25



ndall

Berke--redirect

Q Mr. Berke, I would like you to compare Plaintiff's Exhibits 42 to 51 with Defendant Wyerhaeuser's Exhibits F through L. You have testified that in your opinion they are both sets of pictures of the port clapper valve at San Francisco.

Would you tell us why -- first of all, does there appear to you to be a difference in the appearance of the valve in both sets of pictures?

A The other set of photographs it is quarters. This is the valve where it appears to have been laid out on deck. It appears to be the same valve. In this picture I do not know which valve.

Q You testified to that. Limit yourself then.

A This appears to be the port valve which appears to be the same as that valve which was cut up in sections.

Q Except for the difference in one being whole and the other one being in sections, is there any other difference in the pictures?

A This again would appear to be the starboard valve because it has the clapper alongside it.

Q On Plaintiff's Exhibit 52 you say that is the starboard rather than the port?

ada2

Berke-redirect

1           A       It looks as if it would be the starboard valve.  
2  
3       The cover plate looks in good condition and, of course  
4       the clapper itself and the pin for it appears to be  
5       in good condition.

6           Q       Therefore, you are saying that Plaintiff's  
7       Exhibit 52 is a picture of the starboard valve, not the  
8       port?

9           A       It appears to be the starboard valve.

10          Q       That is because you see the disk there?

11          A       That is correct.

12          Q       And you didn't see the disk for the port valve.  
13       I take it, at that time?

14          A       No, sir.       I did see the disk for the  
15       port valve, but it was mutilated, in the chief engineer's  
16       room.

17          Q       It was mutilated and didn't look like the one  
18       on Plaintiff's Exhibit 52?

19          A       That's correct.

20                 MR. PROOF:     Would you mark these two pic-  
21       tures for identification, please.

22                 (Plaintiff's Exhibits 65 and 66 marked for  
23       identification.)

24          Q       Mr. Berke, I show you Plaintiff's Exhibits 65  
25       for identification and ask you if you can tell us what they



mda3

Berke-redirect

at 7

represents.

A This would appear to be the port clapper valve in the No. 3 hold on the John Weyerhaeuser before it was removed.

Q As you saw it where?

A In Iligan City.

Q I show you Plaintiff's Exhibit 66 and ask you if that representation looks familiar to you.

A This also appears to be the port clapper valve in the No. 3 hold as I saw it in Iligan City.

MR. MALOOF: The plaintiff offers in evidence Plaintiff's Exhibits 65 and 66.

MR. WARNER: No objection.

MR. DE ORCHIS: No objection.

THE COURT: Received.

(Plaintiff's Exhibits 65 and 66 were received in evidence.)

BY MR. MALOOF:

Q I think you testified on cross examination Mr. Berke, that when you saw the starboard clapper valve you didn't notice any leaking.

A The starboard valve was encased in a cement box in Iligan City and I did not -- I was not able to look at the valve, and it was not disturbed since the vessel had

mda4

Berke-redirect

to return to the States.

When I looked at the valve when it was brought up and the cement box and steel casing was taken off and it was brought up on deck, I so stated in my report that it appeared to be reasonably in order, and if it was leaking it would only -- most likely have been leaking through the cover plate on the clapper possibly not being tight.

Q Why do you say anything like that? Do you have any indication that that might be a fact?

A The diver in Japan in his report, and also the Cesabo Heavy Industry and the ABS man, had made some comment he suspected it being leaking. There is an ABS in Japan to that effect.

Q Could it have been leaking and it was repaired before you saw it at San Francisco?

MR. DE OCHIS: That calls for speculation, your Honor. I object to the question.

THE COURT: Sustained.

Q Do you think there is a reason why a cement box is built around the valve, Mr. Berke?

A It wouldn't be built around a valve unless it is suspected of leakage.

Q Thank you.

Mr. Berke, I show you New York Navigation Police



mda5

Berke-redirect

1 B, I believe it is, which is the top photo on a piece of  
2 paper with two photographs on it.

3  
4 MR. MALOOF: I ask, first of all, the bottom  
5 photograph be identified, if I may. Only the top one  
6 has been offered, your Honor. The bottom one is a  
7 picture of the starboard valve, which no one has offered  
8 in evidence yet.

9 THE COURT: I wasn't aware of that. Let  
10 me see that, please.

11 This document was evidently marked Defendant  
12 New York Navigation Exhibit 1 for identification  
13 on the deposition of S. I. Mandle, and this morning was  
14 received in evidence as New York Navigation B. The  
15 fact that the exhibit stamp is on the top of the document  
16 and not on the bottom or in the middle doesn't mean the  
17 whole document isn't in evidence as far as I am  
18 concerned.

19 MR. MALOOF: Then I withdraw my offer on the  
20 understanding both photographs are in evidence, your  
21 Honor.

22 THE COURT: It is in evidence. It was  
23 received this morning.

24 BY MR. MALOOF:

25 Q On cross examination, Mr. Berke, there was

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mda6

Berke-redirect

2 some question about when a hammer test would be employed  
3 on a pipe or a valve. Would there be any question in  
4 your mind that if a leak was suspected you would use a  
5 hammer test on a clapper valve?

6 A If I suspected a leak I would use a hammer  
7 test.

8 Q Or corrosion of any kind in that valve?

9 A If I had noted any I would make a hammer  
10 test.

11 Q I believe you used the expression, in looking  
12 at the Weyerhaeuser Exhibits F to L, that it appeared  
13 there was sufficient metal. Of course, you are not  
14 referring to the place where there is that large weldment,  
15 are you?

16 A No, sir, I am not.

17 Q In a clapper valve like that, where the bot-  
18 tom of the valve is the turn of the bend going out through  
19 the ship's hull, where is the more likely place for corro-  
20 sion to occur?

21 A It would be a combination. The most likely  
22 place for corrosion and erosion would be where the  
23 water takes a sharp turn and she flows past.

24 Q Is that right where it happened on this  
25 valve?



mda7

Berke-redirect

33.

1           A       Yes, and that is where the corrosion would  
2  
3 most likely be more susceptible, in that area, because  
4 that is where the deposits, the residue of the water, would  
5 lay, and she would be partially submerged and subjected  
6 to the sea water there.

7           Q       And the rest of the valve is less susceptible  
8 to the same damage?

9           A       The rest of the valve is usually less vulner-  
10 able.

11          Q       Let's assume this valve had a crack in it four  
12 inches long and the valve was underwater.       Now, would  
13 that water just dribble into the ship or would it come in  
14 in a steady stream?

15          A       When the vessel was deeply laden it would  
16 come in in a considerable stream.

17          Q       It wouldn't dribble down the sides, would it?

18          A       No, sir.

19          Q       Now, there was some discussion about the  
20 disk inside the valve not really supposed to be watertight.  
21 I think what was meant was that if you put a full head of  
22 water on it a little bit of water would come in.       It is  
23 supposed to retard the sea water from coming in, isn't it?  
24 Would that be a proper expression?

25          A       The intended purpose is to retard or exclude

mda8

Berke-redirect

2 to a great extent the sea water from coming in in any large  
3 amounts.

4 Q But with a disk which is working properly  
5 is there any danger, as long as the valve hasn't got a hole  
6 in it?

7 A As long as the valve hasn't any hole in it there  
8 would be no danger, no, sir.

9 Q Mr. De Orchis made a lot of lines on the  
10 board here, but I would like to emphasize a couple of  
11 things before I quit. Isn't it very important that when  
12 one hold shows more water continuously, either by sound-  
13 ings or by pumping, than the other holds on the ship,  
14 that that should be cause for concern?

15 MR. DE ORCHIS: That is not a question, that  
16 is an argument.

17 THE COURT: Yes. Sustained.

18 Q When one hold shows more continuous pumping than  
19 other holds, to a seafaring man is that evidence of leak-  
20 age?

21 A It would be evidence that something may be  
22 wrong.

23 Q And it should be investigated?

24 A In my opinion, it should be investigated.

25 Q If, on one particular voyage for a short period



mda9

Berke-redirect

of time, the starboard valve, the starboard side, showed water and the port side did not, how could you account for such a thing?

A I haven't really evaluated it. It's plausible, what Mr. De Orchis says has a degree of validity to it. There may be other factors involved. But what he had has a degree of validity to it. At least it sounds plausible to me.

Q What sounds plausible?

A That somehow or other, that perhaps the list of the ship, no matter how slight it may be, and the water runs aft, if it was only a small amount of leakage it would tend to find its way into the starboard rather than the port.

Q If there were a list it could still be coming from the port valve over to the starboard side?

A It is conceivable, yes, sir.

Q Is it conceivable the starboard valve was leaking then?

A It is also conceivable the starboard valve may have been leaking.

Q Apparently, Mr. Berke, at Baltimore, while the Iligan cargo was being put aboard, there was 18 inches of water in these bilges already, right up to the top of

ndal0

Berke-redirect

2 the bilge.

3 Now, if I remember correctly there is no  
4 evidence of pumping at that time. We don't know how  
5 many toilets are attached to the port valve, but this could  
6 happen from the toilets, perhaps, without pumping?

7 A It appears to be possible that it could come  
8 from the toilets.

9 MR. MALOOF: No further questions.

10 RECROSS EXAMINATION

11 BY MR. DE ORCHIS:

12 A Eighteen inches of water in that bilge well,  
13 the ship is well above the waterline now, am I correct,  
14 in Baltimore?

15 A Yes, sir.

16 Q With the ship well above the waterline, if  
17 we accumulate 18 inches of water in this well can you  
18 tell us in gallons how many hundreds of gallons that  
19 would be?

20 A Maybe 65, 75 gallons.

21 Q And that would all be coming out of the sanitar-  
22 tion pipe, if you were right that there was a hole in it?

23 A That's where it would appear. That is not  
24 very much.

25 Q So we would have about 65 to 70 gallons of



mdall

Berke-recross

395

human sewage in that hold at that time, wouldn't we?

A We would have 65 to 75 gallons of water.

Q Sanitation water?

A Sanitation water.

Q And you could certainly smell that if you were working or inspecting in that hold as the surveyors were at Baltimore, couldn't you?

MR. MALOCF: I object to the form of that question, your Honor.

THE COURT: Overruled.

A I imagine it would have some odor, yes.

Q You mentioned a mutilated clapper which you saw on the desk of the engineer in Japan somewhere, or Iligan?

A Iligan City.

Q Now, this mutilated clapper, do you have any opinion of where that mutilation took place?

A It took place within the valve itself, I believe.

Q But do you have any opinion as to whether that mutilation was there at the time the ship was going to Baltimore?

A I have not evaluated that. The mutilation took place within the valve itself because it was withdrawn

mdal2

Berke-recross

1 from the valve in that manner and was found that way  
2 by the diver. It would appear, by the degree of  
3 mutilation, it had been banging around in the valve for  
4 some time.  
5

6 Q Let me ask you, do you know how, at Ropie  
7 Japan, in the emergency procedures, they stopped this  
8 ship from leaking?

9 A I believe they put a plug on the outside of the  
10 hull, and then proceeded on the inside of the hull and  
11 pumped the water out to gain access.

12 Q They drove a --

13 MR. MALOOF: I think Mr. De Orchis went far  
14 beyond the redirect. I don't want him to lead too  
15 much.

16 MR. DE ORCHIS: This goes to mutilation.

17 Q Didn't they drive a wooden wedge into the  
18 opening outside the ship, the opening leak to this  
19 valve?

20 A After the diver put his hand in the valve and  
21 found the mutilation, he put the plug in, yes.

22 Q Did the diver report the mutilation was already  
23 there?

24 A He reported it -- I have the words here. The  
25 diver's report was that he found a mutilation in the valve



mdal3

Berke-recross

and then plugged it. They have a report here from the Nippon Salvage Company, Moji, Japan, February 24, 1967, from the diver's report:

"Port side clapper valve was disabled and in open condition. Starboard valve was detained and out of place. Felt in valve leaking. The diver's report taken at anchorage at Tanoura also indicated that a detailed search of the hull was made and no other defects were noted wherein water may have entered the common No. 2 and 3 holds."

BY MR. DE ORCHIS:

Q All I want to know is this: Can you give us, or are you in a position to give an opinion as to whether that valve clapper was mutilated when the ship was leaking at Baltimore?

A No, sir, I cannot.

MR. DE ORCHIS: Thank you.

THE COURT: If everybody is through --

MR. MALOOF: Thank you, Mr. Berke.

THE COURT: -- let me just ask you, before you go.

THE WITNESS: Yes, sir.

THE COURT: I found your drawing, Exhibit 40, about the rose box so helpful that I can't resist asking

mdal4

Berke-

you another question.

Does this picture of the box correspond to the little box drawn on the board by Mr. De Orchis?

THE WITNESS: That's correct.

THE COURT: I gather from something you just said to Mr. De Orchis that when that little rose box or bilge is filled up to the brim 18 inches high it contains about 65 gallons. Is that right?

THE WITNESS: That's correct.

THE COURT: All right.

THE WITNESS: Approximately.

THE COURT: That doesn't strike me as an awful lot of water compared to what we have been talking about here.

Now, how do you measure that? Does somebody stick a rod down the sounding pipe?

THE WITNESS: That's correct.

THE COURT: Suppose there is a lot more water coming in this hole. Where does it go?

THE WITNESS: On the tank top.

THE COURT: That is on what I call the floor?

THE WITNESS: That's correct.

THE COURT: Suppose the floor is completely covered with cargo, as it might be fertilizer. Where



1 does it go?

2  
3 THE WITNESS: It admixes with the fertilizer,  
4 is absorbed partially by the fertilizer. When the  
5 fertilizer becomes saturated it remains as water, and  
6 they found 13 feet of water in that No. 3 hold.

7 THE COURT: How is it measured when it gets  
8 on the floor?

9 THE WITNESS: In this particular case the  
10 sounding pipe was plugged, and it would have been measured  
11 from the tween deck, which is that upper line over there,  
12 and measured internally when the diver or the salvage people  
13 got down into the hold.

14 THE COURT: You are speaking now of what  
15 happened out there in Japan?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. But there were other  
18 times that are relevant here when there was more than  
19 18 inches of water?

20 THE WITNESS: Yes, sir.

21 THE COURT: Now, I am puzzled as to how  
22 it gets measured.

23 THE WITNESS: The water in the hold, if it  
24 was free to flow into the sounding pipe, it would have  
25 the same level of water in the sounding pipe as you would

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have in the hold if the water was allowed to flow into the  
rose box or the bilge well and up into the sounding pipe.

THE COURT: It would rise in the pipe to the  
same level as it would rise in the rest of the hold?

THE WITNESS: That's correct.

THE COURT: Would it make any difference  
whether there was cargo in the rest of the hold?

THE WITNESS: The cargo would act as a --  
if there was a free flow of water between the hold and  
that sounding pipe it wouldn't make any difference, but  
the cargo conceivably may act as a deterrent for the  
water to find the same level in the sounding pipe as it  
would be in the hold.

THE COURT: Cargo of fertilizer might sop up  
the water, so to speak?

THE WITNESS: It would, until it becomes  
saturated, yes, sir.

THE COURT: But a cargo of lumber, let us  
say, would permit the water to flow freely, would it?

THE WITNESS: The lumber would become  
saturated and no longer absorb any more, too.

THE COURT: So that when this ship had a  
cargo in the hold and somebody says in the log that the  
water level in the hold is, just to pick a number, three



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1 feet, that means three feet in the sounding pipe?

2 THE WITNESS: That's correct.

3 THE COURT: And it isn't necessarily three  
4 feet throughout the entire hold?

5 THE WITNESS: You would make the assumption  
6 it would be three feet in the entire hold, but it may  
7 not be, it may be a false level in the sounding pipe.

8 THE COURT: I see.

9 Does that stimulate anybody? I hope not.

10 All right, we will take a brief recess.

11 Thank you.

12 (Witness excused.)  
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